

In these conditions *KD Instruments* means Process Cal Pty Ltd trading as *KD Instruments* or any related corporation or legal entity. The Customer means the person, firm, corporation, government or semi-government authority purchasing goods and/or services from *KD Instruments*.

1. GENERAL TERMS

- 1.1 These terms and conditions shall apply to the supply of goods and/or services by *KD Instruments* to the Customer.
- 1.2 *KD Instruments* is not bound by any terms or conditions contained in any purchase order, purchase form or other similar document of the Customer delivered to *KD Instruments* with respect to the purchase of or order for products, services or otherwise which are at variance with, in derogation from or additional to these general terms and conditions. The customer is bound by these general terms and conditions notwithstanding anything to the contrary in such purchase order, purchase form or other similar document.

2. QUOTATIONS

- 2.1 A quotation or estimate by *KD Instruments* does not constitute an offer and will remain valid for thirty (30) business days from the date of the quotation unless otherwise stated on the quotation after which it is subject to alteration or withdrawal without further notice.

3. THE CONTRACT

- 3.1 The matters referred to in these terms and conditions constitute a Contract between *KD Instruments* and the Customer. The terms and conditions shall prevail over any other terms and conditions that may contain terms and conditions that may be inconsistent or contrary to those contained herein.
- 3.2 These terms and conditions shall apply to the exclusion of all other agreements and prior representations, unless subsequently evidenced in writing by *KD Instruments* and the Customer, and shall be the whole of the Agreement between *KD Instruments* and the Customer.

4. DESCRIPTION OF GOODS

- 4.1 The description of goods and/or services as stipulated on invoices or order forms is provided by way of identification only and the use of that description shall constitute a description under any Contract of Sale by description. Any description of any goods in any brochure, document or other sales literature used by *KD Instruments* shall not form part of any Agreement between *KD Instruments* and the Customer.

5. DESIGN CHANGES

- 5.1 *KD Instruments* has a policy of continuous improvement to products and reserves the right to alter the specification or design without prior notice and shall have no obligations to make alterations in the design and construction of goods previously accepted and delivered even though design changes are incorporated in the goods subsequently being delivered.

6. PRICE VARIATION

- 6.1 Subject to paragraph 6.2 hereof the price shall be as quoted in writing by *KD Instruments*. If a price is not quoted then it shall be in accordance with *KD Instruments* current price. Verbal quotations are subject to written confirmation.
- 6.2 *KD Instruments* reserves the right without notice to alter the price of goods and services whether or not a deposit or part payment has been received by *KD Instruments* for such goods or service and to invoice the Customer for any such extra amount where the costs of the goods to *KD Instruments* has altered due to circumstances beyond its control including but with limiting the generality of the foregoing any variation in *KD Instruments* exchange rates, GST or other taxes, levies, imposts, duties, premiums, fees or charges however designed and to correct errors and omissions.

7. PAYMENT

- 7.1 Payment is to be made to *KD Instruments* for goods and services within thirty (30) days from date of invoice.
- 7.2 If the Customer fails to comply with the terms of payment in paragraph 7.1 hereof then
- 7.2.1 The Customer agrees that it will pay *KD Instruments* a late premium charge amounting to two (2) per centum per month on all monies from time to time in respect of goods and/or services including all charges from time to time owing by the Customer.
- 7.2.2 The Customer shall be liable for all costs including GST relating to any legal action taken by *KD Instruments* to recover monies due from the Customer, these costs including GST will be payable by the Customer to *KD Instruments* on demand.
- 7.2.3 *KD Instruments* reserves the right to discontinue or suspend the supply of goods and/or services to the Customer.
- 7.3 No discount shall be allowed except where otherwise agreed by *KD Instruments* in writing.
- 7.4 Invoices may be issued by *KD Instruments* and will be payable by the Customer in respect of every delivery notwithstanding that the balance of the order has not been nor will not be delivered for any reason.

8. APPLICATION FOR A THIRTY (30) DAY CREDIT ACCOUNT

- 8.1 The Customer agrees that for the purpose of processing my/our application for commercial trade credit account: The Customer agrees to *KD Instruments* receiving from a credit reporting agency a credit report containing personal financial information about them (Privacy Act, 1988)
- 8.2 The Customer agrees that *KD Instruments* may give to and seek from other credit providers named in this credit application and any providers that may be named in a credit report issued by a credit reporting agency information about their credit arrangements. The Customer understands that this information may include any information about their credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive under the Privacy Act, 1988.
- 8.3 Where a Customer opens a credit account with *KD Instruments* the Customer may be required to nominate referees or guarantors (that shall be acceptable to *KD Instruments*) prior to credit being approved by *KD Instruments*.
- 8.4 *KD Instruments* reserves the right to withdraw at any time any credit facilities extended to the Customer where payment is not received or where such other acts or omissions of the Customer are objectionable to *KD Instruments*.

9. DELIVERY AND RETURN OF GOODS

- 9.1 Unless *KD Instruments* otherwise agrees in writing GST, delivery, carriage insurance, handling, storage and packaging and any other expenses relating to the goods shall be charged to and paid by the Customer.
- 9.2 In the absence of specific instruction from the Customer, *KD Instruments* will select the carrier and make such agreement with the carrier on behalf of the Customer as *KD Instruments* in its absolute discretion deems appropriate.
- 9.3 *KD Instruments* will endeavour to deliver the goods (or provide services) within the Customer's required delivery period, but subject to Clause 9.4 shall not in any event be liable for any loss or damage directly or indirectly sustained from any failure to deliver within such period. Time shall not be the essence of this Contract and any delay shall not be the basis of the Customer's cancellation of this Contract.
- 9.4 *KD Instruments* shall not be liable for any loss or damage resulting from any failure to give notice of any delay in delivery.
- 9.5 *KD Instruments* reserves the right to deliver the goods by installments at its absolute discretion and in such circumstances the customer shall accept delivery of such goods by installments.
- 9.6 Where in order to deliver or collect goods, *KD Instruments* or its carrier enters upon the Customer's premises the Customer shall provide full and safe access to *KD Instruments* or its carrier and shall be liable for and indemnify *KD Instruments* and its carrier against the costs of all loss, damage to property and injury to persons, occurring directly or indirectly as a result of the failure by the Customer to ensure the said full and safe access.
- 9.7 The Customer shall be responsible for providing adequate labour and/or material handling equipment for the loading and unloading of goods at its premises.
- 9.8 Where *KD Instruments* agrees to collect goods from the Customer's premises the Customer shall ensure that the goods are all available for collection at an easily accessible central point and that they are ready for loading at the time *KD Instruments* arrives to collect them.
- 9.9 The Customer's return of goods to *KD Instruments* for credit requires the prior written approval of *KD Instruments* and issuance of a Returned Goods Authorisation Number (RGA).



9. DELIVERY AND RETURN OF GOODS

- 9.10.1 persons handling them and in their vicinity; and
- 9.10.2 damage to the goods themselves.
- 9.10 Where goods are being returned to *KD Instruments*, the Customer shall ensure that they are returned complete, together with all operation manuals and accessories, in a safe condition, having regard to the risk to:-
- 9.11 Claims by the Customer for short, damaged or incorrect deliveries must be made within fourteen (14) days from the date of invoice.
- 9.12 *KD Instruments* will not be liable or responsible for any loss or damage, cost or expense suffered by the Customer resulting directly or indirectly from any failure by *KD Instruments* to fulfill any of the terms and conditions herein, including any obligation or liability in respect of any damage to or malfunction of any item supplied, if such failure damage or malfunction is due to any delay or other cause beyond the control of *KD Instruments*.
- 9.13 Where goods are incorrectly ordered by the Customer, supplied and subsequently returned, a restocking fee of fifteen (15) percent of the purchase price of the goods shall be paid together with any delivery fee and GST incurred by *KD Instruments* as a result thereof within thirty (30) days from date of invoice. Should our suppliers restocking fee be in excess of fifteen (15) percent this would be payable by the Customer.
- 9.14 No return of goods will be accepted or a credit note issued by *KD Instruments*, for any goods and/or services specifically acquired for the Customer.
- 9.15 If *KD Instruments* is of the opinion that goods when returned are otherwise than in the same condition as when they were delivered to the carrier or directly to the Customer a charge equal to the cost necessary to restore the goods to their original condition shall be payable by the Customer upon demand by *KD Instruments*.
- 9.16 If goods are returned to *KD Instruments* which *KD Instruments* is unable to resell to a third party or resell for the same amount as was sold to the Customer then *KD Instruments* may charge the Customer an amount equal to the loss incurred as a result of the Customer returning the goods.

10. OWNERSHIP AND RISK

- 10.1 Notwithstanding any credit granted to or anything contained in these terms and conditions to the Customer, *KD Instruments* shall retain the full legal and beneficial ownership and title in and to all the products delivered to the Customer by *KD Instruments* until the customer has paid to *KD Instruments* the full amount due on all outstanding invoice(s) to *KD Instruments*. Until then the Customer will hold and sell the goods as agent for *KD Instruments* and the Customer shall store the goods separately and with the interest of *KD Instruments* as owner clearly marked on the goods and the area in which they are stored.
- 10.2 The Customer will ensure that the goods are kept in good and serviceable condition;
- 10.3 The Customer will secure the products from risk, damage and theft; and keep the products fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Customer.
- 10.4 Any proceeds received by the Customer from the resale of the goods shall be held by the Customer as trustee for *KD Instruments* to the extent of the unpaid invoiced price of those goods and the proceeds of the sale shall be forwarded to *KD Instruments* in full as soon as is reasonably practicable after receipt by the Customer and where the proceeds of sale are less than the amount owing by the Customer to *KD Instruments*, such proceeds shall be applied in practical satisfaction to the invoiced price or amount outstanding until all monies owing to *KD Instruments* for all goods and services supplied by *KD Instruments* to the Customer have been paid in full by the customer to *KD Instruments*.
- 10.5 Should the goods supplied by *KD Instruments* to the Customer be lost or damaged after delivery and prior to payment, the Customer hereby agrees to indemnify *KD Instruments* for such loss and damage.
- 10.6 After the goods leave *KD Instruments* premises they shall be at the risk of the Customer and any damage to the goods shall be at the expense of the Customer.
- 10.7 If the Customer does not pay for any products and or services on the due date then *KD Instruments* is hereby irrevocably authorized by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer in which the products are stored at such premises) and use reasonable force to take possession of the products without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever.
- 10.8 If *KD Instruments* is unable to resell the goods at the same price or more as was invoiced to the Customer by *KD Instruments*, then *KD Instruments* shall be entitled to make a claim, demand or institute, if necessary, an action to recover any loss or damage sustained by *KD Instruments* due to *KD Instruments* not being able to obtain the invoiced plus the added expenses incurred by *KD Instruments* as a result of non-payment by the Customer.

11. CANCELLATION

- 11.1 To the extent permitted by law, orders for goods specifically acquired by *KD Instruments* for the Customer shall not be cancelled by the Customer without *KD Instruments* written consent. The cancellation of any order shall be made on terms which indemnify *KD Instruments* against all loss.

12. CUSTOMER'S SPECIAL REQUIREMENTS

- 12.1 Changes to the specifications at the Customer's request either at the time of placing the order or thereafter will only be accepted at *KD Instruments* discretion. Such changes will only take effect when agreed in writing by *KD Instruments* and which may result in a price increase.

13. WARRANTIES AND EXTENT OF LIABILITY

- 13.1 In any event *KD Instruments* limits its liability for breach of condition or warranty to:
 - 13.1.1 In the case of goods, any one (at *KD Instruments* election) of the following:
 - 13.1.1.1 the replacement of the goods or supply of equivalent goods;
 - 13.1.1.2 the repair of goods;
 - 13.1.1.3 the payment of the cost of replacing the goods or acquiring equivalent goods;
 - 13.1.1.4 the payment of the cost of having the goods repaired; or
 - 13.1.2 In the case of services either (at *KD Instruments* election) of the following:
 - 13.1.2.1 the supplying of the services again; or
 - 13.1.2.2 the payment of the cost of having the services applied again.
- 13.2 The warrants set out in Clause 13.2.1 shall be additional to any non-executable warranties to which the Customer may be entitled pursuant to any statute.
- 13.2.1 Subject to Clause 13.1.1 *KD Instruments* warrants that the goods sold are free from defective materials and workmanship.
- 13.3 *KD Instruments* will repair, or at its option replace or credit (at its discretion) those of the goods which, upon examination are found by *KD Instruments* to be defective in workmanship and/or materials.
 - 13.3.1 The warranty does not apply if:
 - 13.3.1.1 the defect becomes apparent more than twelve (12) months after the date of the invoice and three (3) months from the date of invoice in the case of services (including parts provided);
 - 13.3.1.2 the goods have not been used or stored in accordance with instructions issued by *KD Instruments* or the Manufacturer;
 - 13.3.1.3 the defects are in a manufactured component supplied by *KD Instruments* or the Manufacturer to another;
 - 13.3.1.4 the defective part is made of rubber, glass, synthetic or ceramic materials;
 - 13.3.1.5 the goods have been subject to any alteration or repair by any person other than authorized in writing by *KD Instruments* or the Manufacturer. If the alteration or repair is unrelated to the defect then the warranty remains applicable;
 - 13.3.1.6 the Customer fails to notify *KD Instruments* of this claim under this clause within fourteen (14) days of the defect becoming apparent and to return the goods to *KD Instruments* on its request to do so;
 - 13.3.1.7 the indicated shelf life of the goods has expired. Except as provided in Clause 13.2.1 and 13.3.1 above, *KD Instruments* will not be liable for economic or consequential loss, injury, expense or damage to the Customer or any person to whom the goods are transferred, or in respect of any person to whom the customer or person using the goods make them available or their property, arising from any defect in or failure of the goods, not withstanding negligence on the part of *KD Instruments*, its suppliers, servants, agents, successors or assigns.
- 13.4 If goods are repaired under warranty they will be returned to the purchaser or ultimate user carriage paid.

14. CALIBRATIONS

- 14.1 *KD Instruments* recommends under normal operating conditions calibrations be carried out every twelve (12) months.
- 14.2 If the equipment is operated in severe operating conditions, damaged or requires repair then calibration is recommend to be carried out at intervals of less than twelve (12) months.
- 14.3 The Customer shall supply Manufacturer's Handbook or Service Manuals and appropriate accessories with the equipment to be calibrated. Additional costs may be incurred if these are not supplied.
- 14.4 An approved Customer Purchase Order must be provided before any work can commence.
- 14.5 "Calibration" means the action necessary to measure the accuracy of the instrument as detailed in the Manufacturer's Handbook or Service Manual, together with minor adjustments necessary to bring the equipment within the required accuracy. Other service such as repair of faults and major adjustments are not part of the service to be provided, unless stated in our quotation. Should this additional work be found to be required, it will not be carried out without authorisation of the Customer.
- 14.6 A Calibration Certificate stating the calibration status of the instrument will be provided for each instrument as part of the service.

15. REPAIRS AND PARTS

- 15.1 *KD Instruments* does not promise the ready availability of parts for such goods as may be required to be repaired from time to time.

16. TESTING OF CYLINDERS

- 16.1 *KD Instruments* may at the Customer's expense inspect the test cylinders prior to each refill in order to determine compliance of the cylinders with all relevant Standards Association of Australia. *KD Instruments* may refuse to fill a cylinder if in *KD Instruments* opinion it does not comply with such standard, whereupon the cylinder will be destroyed in accordance with Australian Standards.

17. GOVERNING LAW AND JURISDICTION

- 17.1 These terms and conditions and the contract governed thereby shall be governed by and construed in accordance with the laws from time to time, of the State of Western Australia which is where the head of *KD Instruments* is located.

18. INDEMNITY

- To the full extent permitted by law the Customer:-
- 18.1 Agrees to indemnify and at all times hereafter to keep indemnified and hold *KD Instruments*, its servants and agents and each of them harmless against all claims for loss or damage (whether as a result of negligence or otherwise) arising directly or indirectly out of the Customer's use, possession, ownership or resale to a third party or out of the use, possession or ownership by such third party of the goods or any part or parts thereof whether separately or in combination with any other equipment or material.
- 18.2 Agrees that the indemnity in Clause 18.1 shall survive the termination of this Contract and shall extend to cover all alleged defaults or defects in the goods or part(s) thereof or instruction supplied for use in connection with the goods or out of any failure of the goods to perform a particular task or to achieve a particular result or to comply with any particular specification.

19. FORCE MAJEURE

- 19.1 To the extent permitted by law the Customer releases *KD Instruments* from all and any liability for and in relation to or occurring out of any failure or transaction in performance of its obligation hereunder due in part or in whole to any cause whatsoever beyond *KD Instruments* reasonable control.

20. IMPLIED CONDITIONS AND WARRANTIES

- 20.1 All implied conditions and warranties (statutory or otherwise) are hereby expressly excluded from this Contract insofar as they are capable of being excluded by agreement.

21. COLLATERAL WARRANTIES AND REPRESENTATIONS

- 21.1 All prior statements and representations or collateral warranties that may have been given whether oral or in writing by *KD Instruments* or its servants or agents prior to the delivery of the goods and/or services are expressly excluded to the full extent allowed by law and accordingly *KD Instruments* is released by the Customer from any liability as a result of such statement or representation.

22. FITNESS FOR PURPOSE

- 22.1 The Customer shall not rely upon *KD Instruments* expertise or judgement as to fitness or suitability of use for which may require the goods and or service.

23. WAIVER

- 23.1 Failure by *KD Instruments* to insist upon strict performance by the customer of any terms and conditions contained herein shall not be taken to be a waiver thereof or of any rights of *KD Instruments* in relation thereto and in any event shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion and shall not discharge the Customer from any of its obligations pursuant to these terms and conditions.

24. LIENS

- 24.1 In addition to any lien to which *KD Instruments* may be entitled by statute or common law, *KD Instruments* shall in the event of the Customer's insolvency, bankruptcy or winding up, be thereupon entitled to a general lien on all property whatsoever owned by the Customer and in *KD Instruments* possession at the time.
- 24.2 The Customer agrees that if demand is made by *KD Instruments*, the Customer receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to caveat, as required, and against the event that the Customer fails to do so within a reasonable time of being so requested, the Customer hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by *KD Instruments* to be its true and lawful attorney to execute and register such instruments. Such lien will cover the unpaid price of any goods and/or services supplied by *KD Instruments* to the Customer.

25. NOTICES

- 25.1 All Notices on Accounts shall be in writing and may be hand delivered or mailed postage pre-paid addressed to the postal address of either *KD Instruments* or the Customer as notified to the other from time to time in writing. Any such Notice or Demand or Account shall be deemed to have been received five (5) business days after dispatch if sent by mail, or the next business day if delivered by hand or facsimile transmission or email.

26. VOIDABILITY OF TERMS AND CONDITIONS

- 26.1 The Customer acknowledges that these terms and conditions are subject to any rights and obligations arising between the parties pursuant to any legislation or by implication of a law and specifically acknowledge that this Contract is not intended and will not operate to override any rights and obligations created by the Trade Practices Act (1974) as amended. To the extent that any term or condition of this Contract is void, voidable or repugnant to the provisions of that Act or any other Act of The State of Western Australia, or any other applicable legislation of the Commonwealth of Australia then this Contract shall be read as if that term or condition were deleted and the balance of this Contract shall be enforceable.

27. HIRE AGREEMENT

- 27.1 The Hire Equipment shall always remain the property of *KD Instruments*.
- 27.2 The Customer shall not sell, pledge or part with possession of equipment.
- 27.3 The Customer shall use the hire equipment in a careful and proper manner and not interfere, tamper with the hire equipment.
- 27.4 The Customer is responsible for the safekeeping of the equipment and shall bear the risk of any loss, theft, damage or destruction of the hire equipment. In the event that the hire equipment requires repairs or re-calibration as a result of Customer's negligence, misuse or abuse the Customer shall bear any cost of these repairs including any freight charges.
- 27.5 The Customer shall pay *KD Instruments* the new replacement cost, as assessed, by *KD Instruments* for the hire equipment which is lost, stolen, destroyed or damaged beyond repair.
- 27.6 The Customer shall permit *KD Instruments* representatives to enter the premises where the hire equipment is located at all reasonable times to inspect or carry out repairs.