



**Key Tubing & Electrical Pty Ltd (ACN 623 737 155)**  
6 Manfull St, Melrose Park, SA, 5039  
("the Company")

## **TERMS & CONDITIONS OF SALE**

Use of and access to Key Tubing & Electrical Pty Ltd (the **Company**)'s products are subject to these Terms and Conditions of Sale. By ordering or acquiring products from or through the Company (**Products**), or otherwise dealing with the Company, the Customer agrees that they have read and understood, and agree to be bound by these Terms and Conditions of Sale.

### **1. PRICES:**

- 1.1 The Company may vary the prices of any Products ordered by you that have not been delivered in the 12 months prior to the date of the Customer's order.
- 1.2 All prices are exclusive of GST. GST, if applicable, must be added.

### **2. CANCELLATION OF ORDERS:**

- 2.1 Orders placed with the Company cannot be cancelled without the written approval of the Company, which shall not be unreasonably withheld.
- 2.2 In the event that the Company accepts the cancellation of any order placed with it, the Company shall be entitled to charge a reasonable fee for any work done on behalf of the Customer to the date of the cancellation, including a fee for the processing and acceptance of the Customer's order and request for cancellation.
- 2.3 Where work has commenced, whether it is design or fabrication, cancellation charges would include all labour performed, materials purchased, engineering and administrative charges pertaining to the cancelled order. Where appropriate payment is made, the partially processed materials or completed parts become the property of the Customer.

### **3. TRADING TERMS:**

- 3.1 The Customer is responsible for ensuring that the Products are appropriate for its needs.
- 3.2 The Company shall from time to time issue a valid tax invoice, to be paid within 30 days of the date of such invoice, or within such terms as agreed to in writing by the Company and the Customer.
- 3.3 The Company reserves the right to charge an overdue fee at 1.75% per month on any outstanding amounts.
- 3.4 The Company reserves the right to cease manufacture of any orders placed should any of the following circumstances occur:
  - 3.4.1 payment remains outstanding beyond the Company's payment terms; or
  - 3.4.2 the credit level of the account is exceeded.
- 3.5 Any provision of credit is subject to the terms of our Credit Application form, which may only be amended by agreement of the Parties in writing.
- 3.6 The Company shall use its best endeavours to comply with the Customer's reasonable requests. Delivery dates advised are an estimate only and may be varied at any time by the Company depending on the Company's production commitments, the availability of materials, labour and transport and any other contingencies.

### **4. DISCLAIMERS:**

- 4.1 To the greatest extent permissible by law, the Company gives no warranty and makes no representation, express or implied, as to:
  - 4.1.1 the adequacy or appropriateness of any Products or services supplied by the Company to the Customer for its particular needs or purposes;
  - 4.1.2 any implied warranty or condition as to merchantability or fitness of any Products or other goods or services for a purpose other than that for which they are commonly used;



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4.1.3 the appropriateness of the Products for the Customer's needs, or other applications of that Product.

4.2 The Company is not liable in any circumstances for special, indirect or consequential loss or any damages whatsoever resulting from loss or damage to property, injury, illness or death, loss of use, loss of data, or loss of revenues or profits, whether in contract, tort, negligence or otherwise, arising out of or in connection with the Customer's use of the Products.

4.3 Where liability cannot be excluded, the Company's liability will be limited, at its election, to resupply of the Products, or the cost of resupplying the Products.

4.4 In no circumstances will the Company be liable for any loss or damage of any kind whatsoever in the event it is unable to comply with the Customer's request for delivery at a certain time. The Customer acknowledges and agrees that they will not make any claim against the Company for any loss or damage incurred as a result of early or late delivery.

**5. INDEMNITY:**

5.1 To the greatest extent permissible by law, the Customer agrees to indemnify the Company against any loss, cost or damage, including reasonable lawyers' fees, arising from any claim or demand made by any third party due to or arising in any way out of the Customer's use of the Products.

5.2 Use of the Products may pose a risk to the Customer's safety and that of others. The Customer agrees that it will take reasonable precautions in using the Products, including, but not limited to following all instructions and manuals provided with the Products (if any).

5.3 The Customer agrees to hold the Company, its suppliers, agents and employees harmless from any loss or damage suffered by the Customer in using a Product.

**6. PRODUCT RETURNS:**

6.1 The Customer will be deemed to have inspected and accepted the goods as being in accordance with his order unless they notify the Company in writing of his claims within fourteen (14) days of receipt of the goods (receipt being the date of delivery or the date of collection, as the case requires).

6.2 The Company will not accept the return of any Products unless it has given prior written authorisation for the return, which shall not be unreasonably withheld.

6.3 The Company will not accept Products returned by the Customer if the Products are, in any way, damaged or rendered imperfect after delivery.

6.4 If the Company makes items to a specified order of the Customer or according to the Customer's specifications or design, the Company will not accept return of those Products or allow credit to the Customer unless there is a defect in those Products caused by the Company.

6.5 The Company's acceptance of return of the Products is not an acceptance of or granting of credit to the Customer by the Company. Delivery of all items by the Customer is at the Customer's expense and risk.

6.6 If the Company agrees to accept Products returned by the Customer, a re-stocking fee of 20% of the original cost of the Products will apply.

**7. GENERAL:**

7.1 The Company reserves the right to vary these Terms and Conditions of Sale from time to time by notice given by the Company by any means.



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- 7.2 If any of these Terms and Conditions of Sale are at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision or part thereof shall be interpreted as severable and shall not in any way affect any other of these terms.
- 7.3 No waiver by the Company, in exercising any right, power or provision in these Terms and Conditions of Sale shall operate as a waiver of any other right or of that same right at a future time, nor shall any delay in exercise of any power or right be interpreted as a waiver.
- 7.4 If a dispute arises out of or in connection with these Terms and Conditions of Sale or any contract between the Company and Customer, then the Customer agrees to attempt to settle the dispute by engaging in good faith with the Company in a process of mediation before commencing arbitration or litigation.
- 7.5 The Company is not liable for any breach of its obligations resulting from causes beyond its reasonable control including strikes or civil unrest, and restrictions imposed by law or regulation anywhere in Australia.
- 7.6 These Terms and Conditions of Sale and any transactions governed by it will be governed by and construed in accordance with the law of South Australia. The Customer submits to the exclusive jurisdiction of courts in South Australia.
- 7.7 These Terms and Conditions of Sale record the entire agreement between the parties as to its subject matter. It supersedes any prior understandings or agreements between the parties in connection with it.
- 7.8 The Customer may not assign, delegate or novate these Terms and Conditions of Sale to any other person or body corporate without the Company's written authority.
- 7.9 The Company retains the right to assign, delegate or novate these Terms and Conditions of Sale without notice.