

Terms and Conditions of Kirg Importers (ACN: 069 613 878)

1. Application

These Terms and Conditions ("T&Cs"), apply to any supply of Goods by the Supplier to the Customer.

2. Acceptance of terms and placement of orders

1. Any Order by the Customer to the Supplier and/or any acceptance of any Goods by the Customer will constitute agreement to these T&Cs by the Customer.
2. If the Supplier accepts an Order, the parties will have created a binding Contract and the Supplier will supply the Goods to the Customer, and the Customer will pay the Price to the Supplier in accordance with the terms of the Contract (which includes these T&Cs).
3. The Customer is not entitled to cancel any Contract and must pay to the Supplier any costs associated with the Customer purporting to cancel a Contract.
4. The Customer must provide the Supplier with written details of any required specifications or properties of Goods at the time the Customer provides an Order to the Supplier.
5. The Customer must ensure the specifications or properties of Goods and/or Services stated in any Order by the Customer will be fit for the intended purpose of the Goods.
6. The Supplier will be entitled to rely on the accuracy of any plans, specifications or other information provided by the Customer.
7. If there are any errors in any plans, specifications or other information provided by the Customer to the Supplier, the Supplier will be entitled to vary the Price.
8. The Supplier may cancel any Contract at any time prior to Delivery of the Goods with no liability other than to repay any amount of the Price paid in advance of the cancellation.

3. Delivery of Goods

1. If the Supplier agrees to deliver Goods to the Customer, the Supplier:
 - a. will endeavour to deliver the Goods to the Delivery Address on the Delivery Date;
 - b. the Supplier may charge further Delivery charges if the Customer is unable to receive Delivery of the Goods at the Delivery Address or on the Delivery Date or in accordance with any other Delivery arrangements.

- c. The Supplier may add to the Price any further charges incurred by the supplier including but not limited to storage, transport or delivery costs for any delay caused by the Customer.
 - d. The Supplier may vary the Price to include further charges if the Customer varies their instructions. Any variation must be agreed to by the Supplier and confirmed in writing by the Supplier.
2. The Supplier will not be liable for any delay in Delivery of Goods at the Delivery Address.
3. The Customer will ensure a member of the Customer's Personnel will be at the Delivery Address on the Delivery Date to accept any Delivery of Goods and sign the Delivery docket on the Customer's behalf.
4. The Supplier may deliver any Goods to any person at the Delivery Address who has apparent authority to receive Delivery of the Goods.
5. The signature of a member of the Customer's Personnel on the Supplier's Delivery docket will represent acknowledgement by the Customer that the Goods have been supplied.
6. The Customer will inspect any Goods immediately on delivery or Installation and will be deemed to have accepted the Goods as is unless the Customer provides immediate written notice to the Supplier that the Customer rejects the Goods.

4. Price

1. The Price is exclusive of GST unless otherwise stated by the Supplier in writing.
2. The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.
3. The Supplier may charge, in addition to the Price, any other fees and charges that the Supplier notifies to the Customer from time to time.

5. Deposit and Payment Terms

The Customer must pay for the Goods in full on delivery unless credit terms have been granted to the Customer by the Supplier.

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1. The Customer agrees to grant the Supplier a charge over the whole of the Customer's present and future property and assets (including, without limitation, all the Customer's legal and beneficial interests in freehold and leasehold land, and personal property as defined in the Personal Property Securities Act 2009) as security for any amount

owed by the Customer to the Supplier. The Customer acknowledges the Supplier may lodge caveats over land or security interests on the Personal Properties Securities Register, and take any action to enforce the Supplier's security over the charged property.

2. The Customer must reimburse the Supplier for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses associated with any action by the Supplier to recover money from the Customer.
3. The Supplier may charge monthly compound interest on any overdue amounts owed by the Customer at a rate of 10% per annum.

6. Risk and Title

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1. The risk in Goods passes to the Customer, and the Customer must insure the Goods, immediately on the collection of the Goods by the Customer or delivery and or Installation of the Goods by the Supplier.

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1. The Customer will not receive title to Goods until the Customer makes full payment of the Price and any other amounts payable to the Supplier.
2. Until title in the Goods passes to the Customer in accordance with these T&Cs, the Customer will:
 - a. be only a bailee of the Goods;
 - b. ensure the Goods are kept separate and identifiable from other goods;
 - c. not grant any charge over, or interest in, the Goods to any third party;
 - d. return any Goods to the Supplier immediately on request;
 - e. authorise the Supplier or any agent of the Supplier to enter any land and premises owned, occupied or controlled by the Customer where the Goods are located and take possession of the Goods; and
 - f. hold the proceeds from any sale or disposal of the Goods on trust for the Supplier.

7. Force Majeure

The Supplier will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier's obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier's reasonable control. If any such failure or delay continues for a period of 14 days, the Supplier may terminate any affected Contract.

8. Confidential Information and Intellectual Property

1. The Customer will not use, or disclose to any third party, any Confidential Information disclosed to the Customer.
2. No supply of Goods to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods.

9. Warranties

1. The Supplier does not warrant the Goods are fit for any purpose whether or not made known by the Customer or any third party to the Supplier or any member of the Supplier's Personnel.
2. The Supplier excludes all express and implied conditions and warranties in relation to the Goods and this Agreement except those conditions or warranties that cannot be excluded by law.
3. Nothing in these T&Cs are intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any equivalent Act of any State or Territory of Australia except to the extent permitted by such Acts.

10. Liability

1. The Supplier's liability for any Liability or Claim in relation to these T&Cs, the Contract, and any supply of Goods will be limited to the amount of the Price paid by the Customer to the Supplier.
2. The Supplier will not be liable to the Customer or any other person for any Liability or Claim of any kind whatsoever arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any other remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.

11. Indemnity

The Customer indemnifies the Supplier and each member of the Supplier's Personnel on a full and continuing indemnity basis from and against any Liability or Claim arising directly or indirectly in relation to:

1. the Customer's breach of these T&Cs or any Contract;
2. the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;
3. damage to the property of the Customer or any third party during any Installation of Goods;
4. the Goods not being fit for any purpose;
5. any tests conducted by a third party in relation to Goods;
6. the Customer or any member of the Customer's Personnel directly or indirectly causing any delay in the supply of any Goods;
7. the Customer or any member of the Customer's Personnel refusing to accept any Delivery; or
8. the Customer or any member of the Customer's Personnel purporting to cancel a Contract.

12. Termination

The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:

- a. the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days;
- b. the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;
- c. there is any direct or indirect change in the Control of the Customer;
or
- d. an Insolvency Event arises in relation to the Customer.

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13. Definitions

In these T&Cs:

"Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and

however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

“Confidential Information” means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;

“Contract” means the contract formed as a result of an acceptance of an Order by the Supplier. It includes these terms, any covering letter, quotation, estimate and any other document that refers to these terms.;

“Control” has the meaning set out in the Corporations Act 2001 (Cth);

“Goods” includes any services associated with the supply of those goods or any services specifically ordered by the Customer from the Supplier.

“Customer” means the customer set out in any quotation, offer or other document provided by the Supplier (or, in the absence of such information, the customer who placed the Order);

“Delivery Address” means any Delivery address in a Contract;

“Delivery Date” means any Delivery date in a Contract;

“Goods” means the goods in the Contract;

“Insolvency Event” means any of the following, or any analogous, events:

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- a. the Customer disposes of the whole or any part of the Customer’s assets, operations or business other than in the ordinary course of business;
- b. the Customer ceases, or threatens to cease, carrying on business;
- c. the Customer is unable to pay the Customer’s debts as the debts fall due;

- d. any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Customer's assets, operations or business;
- e. any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors; or
- f. any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer's assets, operations or business;

"Intellectual Property Rights" means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trademarks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

"Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

"Order" means any written or verbal order by the Customer to the Supplier for Goods;

"Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

"Price" means the price of the Goods (including but not limited to any Delivery or other charges);

"Security interest" means a security interest within the meaning of the Personal Property Securities Act 2009, and

"Services" means the services in a Contract and any services associated with the Goods.

14. Miscellaneous

1. These T&Cs or any Contract may only be amended with the Supplier's express written agreement. Any waiver by the Supplier must be express and in writing.
2. The Supplier's rights under these T&Cs or any Contract do not exclude any other rights the Supplier may have at law.
3. If any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply.
4. The Customer must immediately provide written notice to the Supplier if there is any direct or indirect change in the Control of the Customer.
5. The Supplier may assign any rights or benefits under any Contract or these T&Cs or any Contract to any third party.
6. The Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with the Supplier's prior written consent.
7. These T&Cs and any Contract will be governed by the law of the state of New South Wales.
8. In these T&Cs:
 - a. the headings do not affect interpretation;
 - b. the singular includes the plural and vice versa, and a gender includes other genders;
 - c. a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - d. a reference to a party to a document includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
 - e. a reference to a person includes a natural person, body corporate, partnership, trust, association or any governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, corporation or instrumentality or any other entity;
 - f. a reference to a statute, ordinance, code or other law includes regulations, rules and other instruments under the statute, ordinance, code or other law and any consolidations, amendments, re-enactments or replacements;
 - g. a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;

- h. the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- i. any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- j. if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on the next business day.