

KaRaTec Power Supplies Pty Ltd - Terms and Conditions

1. Definitions

Customer means the party, which has ordered the goods, and/or services will be or have been supplied.

KRT means KaRaTec Power Supplies Pty Ltd Limited ABN 49 078 376 039, 186 Blaxland Road Ryde, NSW 2112, Australia.

Goods and/or services mean the goods and/or services identified in the relevant Invoice.

Invoice means the form upon which KRT records an order placed by a customer for the supply of Goods specified in that order.

Purchase price means the purchase price identified in the Invoice for the goods and/or services that are purchased by the customer.

2. The **Customer** warrants that the information comprised in the First Schedule hereto is true and accurate and correct and is supplied for the purpose of obtaining credit.

3. The **Customer** warrants that the person whose signature appears on this Agreement is duly authorized by the Customer to apply for credit and execute this Agreement.

4. The **Customer** agrees to adhere to the terms and conditions of this Agreement

5. Jurisdiction

Notwithstanding any implication of law to the contracts between the Customer and KRT shall be deemed to be made and construed and to be enforceable in and according to the laws of the State of New South Wales and by mutual consent to be subject to the jurisdiction of the Courts of that State.

6. Property of Goods

6.1.1. Notwithstanding that the goods shall in whole or in part be at the risk of the Purchaser from the date of delivery to the Customer, the property in the goods shall remain with KRT until they have been paid for in full by the Customer.

6.1.2. If the Customer is a corporation and before payment in full has been received by KRT, the Customer,

- a) Enters into any arrangement for the benefit of its creditors;
- b) An administrator, liquidator, receiver or official manager is appointed in respect of the customer;
- c) An application is made to wind up the Customer,

Then KRT is specifically authorized as part of the consideration for the supply of the goods and/or services (if applicable) to enter the premises of the Customer and remove the goods supplied by KRT for which payment has not been made in full.

7. Order and Delivery

7.1. The Customer will place all orders to KRT in writing on the Customer's standard order form specifying order number, date of order, full description of goods required, requested delivery date, quotation reference number, place of delivery and full name and title of person placing the order.

7.2. Goods are priced FOB, KRT Sydney. There is a minimum delivery charge of A\$20.00 on all shipments made within Sydney and its surrounding areas. There is an extra charge payable by the Customer for urgent and/ or interstate delivery.

7.3. In the event that, after notification to the Customer that the goods are ready for delivery is caused by the Customer or caused by industrial disputes, including strikes and lockouts, circumstances such as fire, war, mobilization or any other cause beyond the reasonable control of KRT, KRT shall be entitled, at its option, and without limiting its rights under clause 10.2, to arrange suitable storage, whether at its premises or elsewhere, and shall take reasonable steps to protect the Customer's interest in the goods. The Customer shall pay all costs of storage, insurance, demurrage, handling and other charges associated with such storage.

7.4. In the event of any delay caused by the Customer or caused by industrial disputes including strikes and lockouts, circumstances such as fire, war, mobilization or any other cause beyond the reasonable control of KRT, KRT, at its option, may extend the quoted delivery or consignment dates or consign part of an order or suspend consignment during that period of delay or may cancel the order and the Customer shall not be relieved of its obligation to accept and pay for an order, or any part of an order, in accordance with Clause 10, as a result of any such extensions, partial consignments or suspension.

8. Goods Return Policy

8.1. The Customer's responsibility to fully inspect the goods upon receipt to ensure that the good shipped by KRT to the Customer are completed and conform to the Customer's order and specifications/requirements.

- 8.2. (a) KRT must be notified in writing of incorrect supply or faulty goods within Five (5) days of receipt by the Customer, KRT will not be liable to correct or rectify any such claims reported outside of this time period.
- (b) KRT will upon notification advise an RMA number that is simply an invitation to return goods and is not to be taken as an acceptance of any credit claim.
- (c) After an RMA number has been issued the Customer must return goods within Ten (10) days with the RMA number clearly marked on the container/packaging of the goods;
- (d) Any goods returned must be unused and in resalable condition;
- (e) The Customer will pay KRT a restocking fee of 35% of the invoice value on all goods returned because of the Customer's order error;
- (f) KRT will not credit the cost of any non-standard, or customer specific products;
- (g) All goods are to be returned to KRT at the Customer's expenses.

9. Conditions of Supply

9.1. The goods and/or services supplied by KRT to the Customer are supplied on technical information and/or samples supplied by the Customer to KRT and notwithstanding any circumstances whatsoever including any advice or assistance provided by KRT to the Customer concerning the technical information, specifications and/or samples. The Customer accepts full and complete responsibility for all such information, specifications and/or samples and warrants to KRT the completeness accuracy and fitness for purpose/application of same and KRT will have no responsibility whatsoever for goods and/or services supplied on the basis of faulty, incomplete, inaccurate, or defective technical information, specifications and/or samples.

9.2. If the goods and/or services supplied by KRT to the Customer do not correspond with samples the Customer specifically agrees that KRT's liability shall be limited to:

- (a) The replacement of the goods or supply of equivalent goods;
- (b) The repair of the goods;
- (c) The payment of the cost of replacing the goods or acquiring equivalent goods;
- (d) The payment of the costs of having the goods repaired.
- (e) KRT shall be in no way liable for any alleged consequential loss, damage, destruction, injury, or harm of any nature whatsoever which may result from such non-correspondence.

9.3. The Customer acknowledges and agrees to the full extent permitted by law and subject in particular to all rights and remedies in respect of the goods and services supplied by KRT which the consumer has under the Trade Practice Act 1974(as amended) ("the Act") or equivalent or similar state legislation;

- (a) That the Customer has satisfied itself as to the suitability and fitness of the goods and/or services for the Customer particular purpose as specifically disclosed to KRT.
- (b) The KRT goods and/or services do not constitute those of any kind ordinarily acquired for personal, domestic or household use or consumption pursuant to the Act or equivalent or similar State Legislation. Then KRT liability to the customer shall in the case of any and all loss sustained by the Customer be limited in the absolute discretion of KRT to;

In the case of goods, one or more of the following;

- (1) In the replacement of the goods or the supply of equivalent goods;
- (2) The repair of the goods;
- (3) The payment of the material cost of replacing the goods acquiring equivalent goods;
- (4) The payment of the cost of having the goods repaired.

In the case of services;

- (1) The supply of these services again; or
- (2) The payment of the cost of having the services supplied again;

And KRT shall in no way be liable for any alleged consequential loss, damage, destruction, injury, or harm of any nature whatsoever which may be caused to persons or property arising directly or indirectly from use of the goods and/or services.

(c) All conditions and warranties implied by statute whether State, Commonwealth and at Common Law and hereby excluded so far as the law permit.

9.4.

- (a) The Customer acknowledges that all rights in respect of patents, copyrights, design rights, trade marks or other industrial or intellectual property right connected with the goods and/or services shall not pass to the Customer.
- (b) The Customer acknowledges that its employees and agents may have access to private or confidential information owned or controlled by KRT relating to equipment, apparatus, programs, software, specifications, drawings and other data, and such information may contain proprietary details and disclosures. All information and data so acquired by the Customer or its employees or agents thereof shall be and shall remain the exclusive property of KRT.
- (c) The Customer shall use a reasonable degree of care, which in any event shall not be less than the same degree of care which the Customer uses to protect its own proprietary and confidential information, to keep and have its employees and agents keep, any and all such information and data confidential. The Customer shall not copy, publish or disclose such information and data to others, or authorize its employees, or agents, or anyone else to copy, publish or disclose it to others, without KRT prior written approval, and shall return such information and data to KRT upon request.

- (d) With respect to all such information to be kept confidential the Customer agrees;
- (1) Not to provide or make available any of the KRT proprietary information in any form to any person other than those employees, agents and subcontractors of the Customer who have need to know consistent with the Customer authorize use of the information.
 - (2) Not to use or reproduce such information except for use reasonably necessary in connection with the Customer order from KRT.
 - (3) Not to publish or disclose any of the information to third parties without KRT prior written consents; and
 - (4) To return or destroy all such information which is in written or graphic form at the conclusion of its authorized use.
- (e) The Customer shall indemnify KRT against any and all liabilities, claims and cost incurred by or made against KRT as a direct or indirect Customer involving any infringement of alleged infringement of any rights of any third party.
- (f) If any action, suit, proceeding, claim or demand is brought or made alleging that the sale, use or any other dealing with the goods and/or services infringes the trade name, patent copyright, registered design or any other intellectual or industrial property right of third parties, the Customer shall forthwith notify KRT thereof and give every assistance to KRT in connection therewith as the Customer may reasonably require and shall not itself handle, deal with or compromise any such action, suit, proceedings, claim or demand except with the prior written consent of the Customer.

10. Payment

- 10.1. Subjected to sub-clause 10.2, all invoices shall be paid in full no later than thirty (30) days from the date of invoice, unless KRT otherwise agrees in writing. Time shall be of the essence in this regard.
- 10.2. KRT shall be entitled to invoice for goods and/or services supplied to the Customer upon delivery thereof, subject to contrary agreement in writing PROVIDED THAT if delivery of any goods and/or services is delayed as a result of circumstances beyond the reasonable control of KRT (include the circumstances set out in Clauses 7.3 and 7.4) then KRT shall be entitled to invoice the Customer for the goods at the expiration of a period of fourteen (14) days after notification by KRT to the Customer that the goods are ready for delivery in which event payment of fifty per cent (50%) of the agreed price for the goods referred to in that notice shall fall immediately due and payable, the balance becoming payable on delivery or within three (3) months of the date of the notice, whichever is the earlier.
- 10.3. In the event that the Customer fails to make any payment to KRT when payment fall due, then KRT shall have the right, without prejudice to any other right or remedy to which KRT may be entitled to charge interest on the overdue amount at the rate of 16% per annum together with any costs expended in collecting and outstanding money, calculated from the date of invoice to the actual date of full and final payment. Any payment by the Customer shall be credited first against any interest to accrued and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the price.
- 10.4. The extension of credit facilities and the terms upon which such credit is provided are, in all cases, at the sole discretion of KRT and are subject to confirmation on the receipt of an order. In any event KRT retains the right to withdraw credit facilities at any time prior to delivery of goods.

11. Taxation

In addition to the Purchase price and delivery charges and extra charges applicable the Customer will pay by the due date all Federal and/or State goods and services taxes (GST), consumption or similar tax, duty or fee applicable to the purchase of the goods and/or services. And shall indemnify KRT in respect of such GST, consumption and/or similar tax, duty or fee.

12. Change to Terms and Conditions

- 12.1. Shall only be varied with written consent of KRT;
- 12.2. Shall be governed and interpreted in accordance with the laws of New South Wales and Australia as applicable and the parties submit to the non exclusive jurisdiction of New South Wales Courts;
- 12.3. Constitute the entire agreement between the KRT and the Customer and supersede all previous communications whether oral or written between KRT and the Customer with respect to the subject matter hereof;
- 12.4. No rules of construction shall apply to the disadvantage of any party on the basis that the party shall be responsible for the preparation of these terms and conditions or any part of them.
- 12.5. Any part of these terms and conditions which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining parts of these terms and conditions.

13. Warranty and Exclusion of Liability

- 13.1. KRT warrants to the Customer that, under proper use in accordance with KRT's specifications and instructions (if any) the goods will be free from defects solely due to faulty workmanship and materials, during a period of twenty-four (24) months from delivery, to the extent that upon authorized return to KRT, freight pre-paid, during that period, of any part of the goods covered by this warranty, KRT shall, if it finds such a part to be so defective in its sole opinion, at its option repair such part or supply a replacement part, provided that;
- (a) The goods or any part thereof are not, and have not been, without KRT's consent, altered, repaired or subjected to any technical attention by any person other than KRT's authorized representatives;
 - (b) The provision of this paragraph 12.1 may, at KRT's opinion, be varied or replaced by specific warranty conditions issued in respect of particular products; and
 - (c) This warranty does not cover damage due to normal wear and tear, improper installation, use of any KRT's goods in life support products, misuse or neglect or where goods have been subjected to operating or environment conditions in excess of maximum value in the applicable specification.
- 13.2. To the extent permitted by law, and except as expressly provided in paragraph 12.1, all warranties representations, terms and conditions, concerning the goods or services to be supplied by KRT in respect of the goods, including, but not limited to, warranty, representations, terms or conditions regarding the ability of goods to be used in life support products, whether express or implied, and hereby expressly excluded.
- 13.3. To the extent permitted by law, KRT shall not be liable, nor shall there be any remedy against KRT in respect of any claim, whether contractual, tortious, statutory or otherwise, for any loss, damage, costs, expenses or their injury or harm suffered by the Customer or any other person in relation to or arising out of use of the goods or in relation to or arising out of services supplied by KRT in relation to the goods, including, but not limited to, loss of profits, loss of business, unavailability of goods or losses arising from claims by third parties.

14. Disputes

- 14.1. If a dispute arises out of or relates to these terms and conditions or the subject matter i.e. the goods and/or services the Customer and KRT agree to first endeavor to settle the dispute by mediation conducted in accordance with Australian Commercial Disputes Centre (ACDC) mediation guidelines and administered by the ACDC, provided that the mediator shall, where possible be a suitably qualified member of the Institute of Engineers.
- 14.2. In the event that any dispute had not been settled within twenty eight (28) days (or such other period as agreed to in writing between the Customer and KRT) after the appointment of the mediator, then the dispute may be submitted to expert determination administered by the Australian Commercial Disputes Centre (ACDC). The conduct of the expert determination shall be governed by the ACDC expert determination rules provided that the expert shall, where possible, be a suitably qualified member of the institute of Engineers and determination shall not be binding unless agreed to by both parties.

15. Force Majeure

Neither KRT nor any of its employees, agents of sub-contractors shall be under any liability whatsoever to the Customer for non-performance, part performance, defective performance or delay in the performance of any goods or services supplied or work carried out or to be carried out by KRT its employees, agents or sub-contractors, which is directly or indirectly caused by or is a result of any circumstance beyond the reasonable control of KRT. Without prejudice to the generality of the foregoing, the following shall be regarded as such circumstances.

- (1) Act of God, explosion, flood, lightning, fire or accident;
- (2) War, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (3) Rebellion, revolution, insurrection, military or usurped power or civil war;
- (4) Riot, civil commotion or disorder;
- (5) Acts, restrictions, regulations, by laws, refusals to grant any licenses or permission, prohibitions or measures of any kind on the part of any government authority;
- (6) Import or export regulations or embargoes;
- (7) Strikes, lock outs, or other industrial or trade disputed of whatever nature (whether involving employees of the Contractor or third party);
- (8) Defaults of suppliers or sub-contractors (for any reason whatsoever) (where such delay is beyond reasonable control of the sub-contractor or supplier concerned).
- (9) Incompleteness or inaccuracy of any technical information which is the responsibility of the Customer to provide;
- (10) Any failure, default, delay in performance, or any act of omission of any nature whatsoever on the part of the Customer, or its employees, agents, suppliers or sub-contractors.

16. Variation

KRT may vary these Terms & Conditions of Sales at any time by notice to the Customer.

17. Authority for KRT to Obtain Certain Credit Information

The Customer agrees to KRT obtaining a report about the Customer's commercial credit worthiness from a business or businesses, which provide information about the commercial credit worthiness of persons.

18. Authority to Exchange Information with Other Credit Providers

The Customer hereby authorizes KRT to give-to and receive-from the credit providers named in Schedule 1 or that may be named in a credit report issued by a credit-reporting agency, information about the Customer's credit arrangements. The Customer understands that this information can include any information about the Customer's credit worthiness, credit standing, credit history or credit providers are allowed to give or receive each other under the Privacy Act.