

1. Definitions

- a. "Company" shall mean KALD NZ Limited trading as Cairnscorp TM and its successors and assignees.
- b. "Customer" shall mean the Customer or any person or Company acting on behalf of and with the authority of the Customer.
- c. "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer if a Limited Liability Company on a principal debtor basis.
- d. "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- e. "Services" shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- f. "Price" shall mean the cost of the goods as agreed between the Company and the Customer subject to clause 4 of this contract.

2. Acceptance

- a. Any instructions received by the Company from the Customer for the supply of Goods shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Company.
- b. None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements.

3. Quotations

Unless otherwise stated in writing by the Company:

- a. Quotations will be open for acceptance for one (1) month from the date of the quotation.
- b. Quotations are based in \$NZ unless stated otherwise.
- c. Quotations are based on current costs of labour and overheads and on latest quotations available from suppliers. Any increase in costs occurring after the date of expiry of the quotation will be charged to the customer.
- d. Any drawings or details submitted by the Company with a quotation are for the quotation purpose only and shall not form part of any contract.
- e. All quotations are GST exclusive and GST will be added to the prices quoted.
- f. All drawings and Intellectual property remain with the company at all times, and are not to be copied or transferred without written authorisation.

4. Goods

- a. The Goods shall be as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Company to the Customer.
- b. In the case of second hand Goods the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

5. Price

At the Company's sole discretion;

- a. The Price shall be as indicated on invoices provided by the Company to the Customer in respect of Goods/Services supplied; or
- b. The price shall be the price of the Company's current price at the date of delivery of the Goods; or
- c. The Price of the Goods shall be the Company's quoted Price which shall be binding upon the Company provided that the Customer shall accept the Company's quote within fourteen (14) days

6. Payment

- a. Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due on delivery of the Goods.
- b. For approved Customers at the Company's sole discretion, payment shall be due on the 20th of the month following the invoice date.
- c. Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or any other method as agreed to between the Customer and the Company.
- d. The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent those taxes are expressly included in any quotation given by the Company.

7. Credit Limit

- a. The Company may at its discretion, delay or terminate the supply of any goods, including existing and future orders for goods, if the Customer's credit account exceeds the credit limit set by the Company. The Customer agrees that the Company shall retain the title of the supplied goods until payment is received in full in accordance with the Terms and Conditions of trade.

8. Delivery of Goods

- a. Delivery of the Goods shall be made to the Customer's address and at the Customer's expense. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or the Goods shall be delivered to the Customer at the Company's address.
- b. When the Goods at the date of this agreement are in possession of a third person there is no delivery by the Company to the Customer unless and until such third person acknowledges to the Customer that the Goods are

being held on behalf of the Customer subject to the issue or transfer by the Company of documents of title to the Goods.

- c. Where there is no agreement that the Company shall send the Goods to the Customer, delivery to a carrier at limited carrier's risk at the expense of the Customer is deemed to be delivery to the Customer.
- d. The Company may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- e. The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- f. All claims for errors or short delivery must be made to the Company within seven days of delivery.

9. Risk

- a. If the Company retains property in the Goods nonetheless all risk for the Goods passes to the Customer on delivery.
- b. If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Company is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries. The Company will apply the insurance proceeds as follows:
 - (i) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
 - (ii) second, in payment of the outstanding Price of any other Goods supplied to the Customer by the Company whether under the terms and conditions or otherwise;
 - (iii) third, in payment of any other sums payable to the Company by the Customer on any account,
 - (iv) fourth, any balance is to be paid to the Customer.

10. Defects

- a. The Customer shall inspect the Goods on delivery and shall within three (3) days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery. If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

11. Return of Goods

- a. The Customer may return Goods at the sole discretion of the Company. Goods must be returned with the following in as new condition;
 - (i) Express approval for return of the goods, by issue of a Return Authorisation number, must first be obtained from duly authorised officer of Company.
 - (ii) The goods to be returned must include any and all relevant accessories. The goods (including accessories) must be in the original packaging; unopened and must be in an undamaged and saleable condition.
 - (iii) No claim for credit in respect of any goods returned may be approved by Company unless the relevant claim form of the Customer, which must accompany any goods returned, indicates at least the following: (i) the purchase invoice number and date; (ii) the reason for return; and (iii) the name of the officer of Company who has approved such return and the detail of such approval;
 - (iv) All cost incurred in returning the goods to Company shall be borne by the Customer, unless otherwise approval in writing by an authorised officer of Company.
- b. If the goods are returned after 14 days from the delivery date the Company may (in its discretion) accept the Goods for credit at current price but this will incur a restocking fee of 15% of the value of the returned Goods plus any freight which shall be immediately payable by the Customer.

12. Warranty

- a. If the Customer acquires or holds itself out as acquiring goods for the purpose of a business, no representation, condition, warranty or promise, expressed or implied, applies to these terms and Conditions or to the sale to be effected pursuant to them, other than the manufacturers written warranty (if any).
- b. If the Customer does not acquire, or hold itself out as acquiring, the goods for the purpose of a business no representation, condition, warranty or promise, expressed or implied, applies to these terms and Conditions or to the sale effected pursuant to these Terms and Conditions, other than the manufacturers written warranty (if any) and the guarantees provided by the Consumers Guarantees Act 1993.
- c. Except as provided in the Consumers Guarantee Act 1993, the Company shall not be liable for any loss of any kind whatsoever suffered by the Customer as a result of a breach of any of the Company's obligations under these Terms and Conditions or any negligence on the part of the Company, its servants, agents or contractors, nor shall the Company be liable for any loss damage or injury caused to the Customer's servants, agents, contractors, customers, visitors, tenants, trespassers or other persons. The Customer hereby indemnifies the Company against any claims by such persons.
- d. Notwithstanding anything else in these Terms and Conditions, the liability of the Company arising from breach of any of the Company's obligations under these Terms and Conditions, from any cancellation of these Terms

and conditions or from any negligence on the Company's part, its servants, agents or contractors (but not from any liability under the Consumers Guarantees Act 1993), will be limited to the damages which will not exceed the cost of the goods in the relevant Company's invoices.

- e. Except for such guarantees which cannot be excluded by virtue of the Consumers Guarantees Act 1993, all warranties, descriptions, representations or conditions whether implied by law, trade, customs or otherwise including as to fitness, suitability or otherwise, are expressly excluded to the fullest extent permitted by law. The warranties and guarantees set out in the Sales of Goods & Services Act 1908 do not apply and are excluded from this agreement.
- f. The Company does not undertake that repair facilities and parts will be available for the Goods. The Company will not be liable to repair any defective Goods and at its own discretion may:
- g. notify the manufacturers of the Goods of any defect notified by the Customer; and
- h. request the manufacturers to repair or replace any defective Goods.

13. Default & Consequences of Default

- a. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 10% per calendar month and shall accrue at such a rate after as well as before any judgement.
- b. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against the entire Company's costs and disbursements including on a solicitor and own client basis and in addition all of any specified collection agency's costs of collection.
- c. Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
- d. In the event that:
 - (i) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due, Or;
 - (ii) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, Or;
 - (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer, then;
 - (1) the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (2) all amounts owing to the Company shall, whether or not due for payment, immediately become payable; and

14. Title

- a. It is the intention of the Company and agreed by the Customer that property in the goods shall not pass until:
 - (i) The Customer has paid all amounts owing for the particular Goods, and
 - (ii) The Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Company shall have received payment and all other obligations of the Customer are met.
- b. It is further agreed that:
 - (i) The Customer shall not deal with the money of the Company in any way which may be adverse to the Company.
 - (ii) Until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.
 - (iii) If the Customer fails to return the Goods to the Company then the Company or its agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damage caused.
 - (iv) The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company.
 - (v) The Company may require payment of the Price or the balance of the Price due together with any other amounts due from the Customer to the Company arising out of these terms and conditions, and the Company may take any lawful steps to require payment of the amounts due and the Price.
 - (vi) The Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer.

15. Personal Property Securities Act 1999 ("PPSA")

- a. The Customer grants to the Company a security interest in:
 - (i) All present and after acquired goods supplied by the Company to the Customer, including but not limited to hardware and hardware fittings, components' and component fittings, furniture and furniture fittings, accessories and miscellaneous parts together with all associated items.
 - (ii) All present and after acquired goods supplied by the Company to the Customer, described in any quotation or tender from the Company to the Customer, and or in any contract or supply agreements between the

Company and the Customer, including without limitation, documentation (electronic or otherwise) supplementary to any contract incorporated in the contract by reference or otherwise, and/or in any purchase order or any other order for goods from the Customer, and/or in any dispatch order, invoice, statement or remittance advice from the Company to the customer.

- b. At the request of the Company, the Customer will promptly execute any documents and do anything else required by the Company to ensure that any security interest created constitutes a perfect security interest over all personal property supplied by the Customer to the Company until all and any amounts due to the Company by the Customer have been paid in full. This obligation extends to executing any amendments to any contract with the Company reasonably requested by the Company and providing the information required by the Company to complete and register a financing statement or financing change statement.
- c. The Customer will not, without the prior written consent of the Company, agree to allow any person (including the Customer) to file a financing statement over any personal property supplied by the Customer while the Customer is liable to the Company for any debt.
- d. If the Customer becomes aware of any persons taking any steps to file a financing change statement against any goods supplied to the Customer by the Company, the Customer must immediately notify the Company of such steps.
- e. The terms "security interest", "personal property", "financing statement" and "financing change statement" referred to in the above clauses have the meanings given by the PPSA. The Customer agrees and acknowledges that these Terms constitute a "security Agreement" for the purpose of the PPSA.
- f. The Customer irrevocably authorises the Company to enter any premises occupied by the Customer, at any time, to inspect, search for and remove the goods subject to these terms and conditions. The Company shall not be liable for cost, damages or expenses or any other losses whatsoever incurred by the Customer or a third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever. The Customer hereby irrevocably indemnifies the Company, its agents and representatives for any liability arising from any act of trespass committed or damage caused by such entry.
- g. The Customer, including its principals and directors (if any) consent to and authorise the Company to search the Personal Property Securities Register and any other registries and to make such enquiries as it deems necessary including, without limitation, the making of enquiries of persons nominated as trade referees, the Customer's bankers or any other credit providers to investigate the credit worthiness of the Customer.
- h. The Customer expressly waives all its rights to receive a copy of any verification statement or financing statement or any other notice which can be waived in accordance with the PPSA including, without limitation, its rights under section 114(1)(a), 116, 117(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 of the Act.

16. Security and Charge

- a. Notwithstanding anything to the contrary contained herein or any other rights which the Company may have howsoever:
 - (i) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interests in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (ii) Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
 - (iii) To give effect to the provisions of clause [14 and 15] inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Company or the Company's nominee, as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Company and/or EC Credit Services Limited shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Company and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Company and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Company's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

17. Cancellation

- a. The Company may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. The Company shall not be liable for any loss or damage whatever arising from such cancellation.

18. Privacy Act

- a. The Customer and the Guarantor/s (if separate to the Customer) authorises the Company to collect, retain and use any information about the Customer, for the purpose of assessing the Customers creditworthiness or

marketing any Goods and Services provided by the Company to any other party.

- b. The Customer authorises the Company to disclose any information obtained to any person for the purposes set out in clause 15.1
- c. Where the Customer is a natural person the authorities under (clause 15.1 & 15.2) are authorities or consents for the purposes of the Privacy Act 1993.

19. Unpaid Company's Rights to Dispose of Goods

- a. In the event that:
 - (i) the Company retains possession or control of the Goods; and
 - (ii) payment of the Price is due to the Company; and
 - (iii) the Company has made demand in writing of the Customer for payment of the Price in terms of this contract; and
 - (iv) the Company has not received the Price of the Goods,
- b. then, whether the property in the Goods has passed to the Customer or has remained with the Company, the Company may dispose of the Goods and may claim from the Customer the loss to the Company on such disposal.

20. Lien & Stoppage in Transit

- a. Where the Company has not received or been tendered the whole of the Price, the Company shall have:
 - (i) a lien on the Goods;
 - (ii) the right to retain them for the Price while the Company is in possession of them;

(iii) a right of stopping the Goods in transit whether or not delivery has been made; and

- (iv) a right of resale,
- b. the foregoing right of disposal, provided that the lien of the Company shall continue despite the commencement of proceedings or judgement for the Price having been obtained.

21. General

- a. If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- b. All Goods and Services supplied by the Company are subject to the laws of New Zealand and the Company takes no responsibility for changes in the law which affect the Goods or Services supplied.
- c. The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.
- d. The Customer shall not set off against the Price amounts due from the Company.
- e. The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- f. The Company reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Customer of such change.