

1 Application of Conditions

1.1 These Conditions of Sale ("Conditions") apply to all quotations, offers and purchase orders made or accepted by Leonhard Kurz (Aust) Pty Ltd ACN 000 810 800 ("Company") and to deliveries of all goods manufactured or supplied by the Company ("Products") to any person, firm or company which enters into an agreement with the Company ("Customer").

1.2 So far as applicable these Conditions also apply to the provision of any services including advice accompanying the supply of, or provided in relation to, Products ("Services") and, where the context allows, any reference to the supply of Products includes the provision of such Services.

1.3 Any conditions or other terms which are inconsistent with these Conditions and which are set out in any quotation, offer, purchase order or other document submitted by the Customer are expressly excluded.

2 Orders

2.1 Neither a Customer's quotation nor any order submitted or placed by a Customer shall be binding on the Company unless and until the Company has given written acknowledgement of its acceptance on terms which include these Conditions ("Order Confirmation"). If Products are supplied without an Order Confirmation, the applicable invoice shall be deemed to constitute the Order Confirmation.

2.2 Unless otherwise specified all offers for the supply of Products by the Company are binding and firm for 30 days from the date of offer.

3 Specification

3.1 Products are supplied in accordance with a technical specification and test results proving conformance with the specification (if any) in force at the time of concluding the agreement between the Company and the Customer ("Technical Specification"). Any additions and alterations made to a Technical Specification by the Company at the request of the Customer shall be subject to an additional charge.

3.2 The Customer is solely responsible, and must itself examine and test the Products at its cost, to ensure they are fit or suitable for the Customer's purposes. Save as provided in clause 8 of these Conditions, the Company accepts no liability for the fitness or suitability of the Products for the Customer's particular purposes.

4 Prices and Payment

4.1 The prices of the Products are the prevailing prices at the time of delivery, whether expressly

set out in an Order Confirmation or in a price list published by the Company.

4.2 Unless otherwise specified all prices are:

(a) quoted Ex Works (INCOTERMS 2000) the Company's nominated warehouse, factory or depot; and

(b) exclusive of all taxes, including sales taxes, goods and services and consumption taxes and other duties, imports and levies relating to the supply or use of the Products ("Taxes").

The Company reserves the right to charge for delivery and an additional handling fee for orders of Products valued at less than AUS \$60.

4.3 Unless otherwise agreed, payment is due in full within 30 days from the date of statement.

4.4 The Company may charge interest at the rate which is 2% higher than that applied to commercial overdraft balances of over AUS \$100,000 by the Company's principal bank, such rate to be compounded and calculated daily on the amount outstanding after expiry of the 30 day period until it has been paid in full.

4.5 If payment is not made in accordance with clause 4.3, or if at any time the credit standing of the Customer, in the opinion of the Company, is at risk or has been impaired the Company may refuse delivery of any Products ordered until alternative arrangements as to payment or credit in terms satisfactory to the Company have been agreed.

4.6 The Customer must pay or reimburse the Company all Taxes. The Company shall provide the Customer with a tax invoice.

4.7 The Customer may not withhold or set off any payment or make deductions from any amount owing to the Company without the Company's prior written consent.

5 Cancellation

5.1 No notice of cancellation or variation of a quotation or order submitted by a Customer and accepted by the Company ("Order") shall be valid unless given to the Company in writing.

5.2 In any case in which a Customer gives written notice of cancellation or variation in accordance with clause 5.1, and without prejudice to its other rights, the Company reserves the right to charge for all Products and Services it has performed and shall need to perform in fulfilling an Order or, if the work is substantially complete or the Products were made to order or are otherwise not immediately available for sale to another customer

at an equivalent price, to charge for the full amount set out in the applicable Order Confirmation in addition to any other costs it incurs on the Customer's behalf.

6 Delivery

6.1 Unless the Company otherwise agrees, and subject to any additional charges incurred in delivery and transport, delivery of Products shall be made to the delivery point specified in the applicable Order Confirmation.

6.2 Stated delivery times are no more than an estimate by the Company and shall not be binding upon the Company which shall not be liable for any costs or damage caused by reason of any delay in delivery.

6.3 If the quantity of Products delivered does not correspond with the quantity stated in an Order Confirmation the Customer shall only be liable to pay for the quantity delivered in the case of short-delivery and for the contract price in the case of over-delivery (subject in the latter case to permitting the Company to collect the surplus Products) provided that in no event shall such short or over-delivery entitle the Customer to damages or give the Customer a right to rescind the agreement of which these Conditions form part.

6.4 Any surplus Products delivered shall remain the property of the Company and the Customer shall take all necessary precautions for the safe custody and protection of such surplus Products until the time of their removal by the Company.

6.5 In no circumstances shall any Products be returned to the Company without its prior written consent.

7 Passing of Risk and Title

7.1 Risk in the Products shall pass to the Customer when the Products are tendered for delivery at the delivery point specified in an Order Confirmation or when the Products are collected by the Customer for loading into the vehicle of the Customer, its carrier or other agent.

7.2 Legal and beneficial title ("ownership") in the Products shall remain with the Company until:

- (a) the Products the subject of an Order Confirmation; and
- (b) any other amounts the Customer may owe the Company, whether under the agreement of which the Conditions form part, under any other agreement or pursuant to any other order,

have been paid in full.

7.3 Until such time as ownership in the Products passes to the Customer, the Customer shall:

- (a) store the Products in a manner which makes them readily identifiable as the property of the Company;
- (b) hold the Products as bailee of the Company;
- (c) keep, and provide the Company at any time on reasonable request, proper and complete stock records covering the receipt, identification, storage, location, sale and movement of the Products; and
- (d) keep the Products insured against theft, damage and destruction.

7.4 Notwithstanding clauses 7.2 and 7.3 the Customer is entitled until notified by the Company or until the happening of any of the events set out in clause 7.7 to:

- (a) sell the Products in the normal course of its business, in which case the proceeds of resale must be held in trust for the Company in a separate account; or
- (b) convert the Products into other products or attach, affix or incorporate the Products to or with other products.

7.5 The Company is entitled at any time while any debt remains outstanding by the Customer to notify the Customer of its intention to take possession of the Products and for this purpose to enter upon the land and buildings of the Customer with all necessary equipment to take possession of the Products.

7.6 On receipt of notice from the Company or on the happening of any of the events set out in clause 7.7, the Customer's authority to sell or otherwise deal with the Products as set out in clause 7.4 is withdrawn.

7.7 The Customer shall give immediate notice to the Company of:

- (a) any notice to the Customer that a receiver or manager is to be or has been appointed over its assets or any part of its business or undertakings;
- (b) any notice to the Customer that a petition to wind up the Customer is to be or has been presented or any notice of a resolution to wind up the Customer;
- (c) a decision by the Customer that it intends to make any arrangements with its creditors;
- (d) any act of bankruptcy as defined in section 40 of the *Bankruptcy Act 1966* (Cth.).

8 Conditions and Warranties

8.1 Save as expressly provided in these Conditions or the agreement of which these Conditions form

part or in the *Trade Practices Act 1974* (Cth.) ("Act") and equivalent State and Territory legislation:

- (a) all conditions and warranties (whether express or implied by statute or common law or arising from conduct or by previous course of dealing or trade custom or trade usage or otherwise) as to the quality of the Products or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or any other matter covered by the conditions and warranties implied by Part V, Division 2 of the Act (other than section 69) are hereby expressly excluded; and
- (b) the Company accepts no liability for any loss, damage or injury, including consequential loss (such as loss of profits) arising from the condition, supply fitness, suitability or use of the Products or any representation, recommendation or advice made or given in relation to the Products or from the Company's breach or performance of the agreement of which these Conditions form part or otherwise, whether or not caused by the Company's negligence.

8.2 Nothing in this Agreement is intended to exclude the operation of any conditions or warranties implied by Part V, Division 2 of the Act and, if applicable, the provisions of equivalent State and Territory legislation, which cannot lawfully be excluded. However, in relation to the supply of Products to a consumer, as that term is defined in section 4B of Act, the Company's liability for breach of those conditions or warranties (other than those implied by section 69 of the Act) is limited, at the Company's option, to any one or more of:

- (a) in the case of Products, the replacement, repair or payment of the cost of replacement or repair of the Products; and
- (b) in the case of Services, supplying the Services again or payment of the cost of having the Services supplied again.

9 Warranty for Defective Products

9.1 The Company undertakes that if the Products are found upon inspection by or on behalf of the Company not to conform to the applicable Technical Specification, the Company shall (at its option):

- (a) replace the Products found not to conform to the Technical Specification;
- (b) bring the Products into conformity with the Technical Specification; or

- (c) take back the Products found not to conform to the Technical Specification and refund the appropriate part of the purchase price,

provided that:

- (d) the liability of the Company shall in no event exceed the purchase price of the Products; and
- (e) the Customer has performed all its contractual obligations.

9.2 The warranty set out in clause 9.1 does not apply unless:

- (a) the Products have been properly handled, stored, used and/or maintained and any instructions by the Company in relation to the Products have been fully observed;
- (b) the Customer gives written notice to the Company of the alleged defect in the Products, such notice to be received by the Company within 7 days of the date when such defect appeared or ought to have been discoverable;
- (c) the Customer gives the Company a reasonable opportunity to inspect the Products; and
- (d) the Customer makes no further use of the Products that are alleged to be defective, or any plant, machinery or other equipment into which the Products have been incorporated, after the Customer discovers or ought to have discovered that they were defective.

10 Force Majeure

The Company shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations occasioned by any cause whatsoever that is beyond the Company's control including but not limited to: Act of God; war; civil disturbance; requisitioning governmental restrictions, prohibitions or enactments of any kind; import or export regulations; strikes; lock-outs or other industrial disputes (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials; breakdown of machinery; fires; or accident. If any such event occurs the Company may vary, cancel or suspend any Order Confirmation or agreement of which these Conditions form part without incurring any liability for any such loss or damage.

11 Intellectual Property

11.1 The Company for and on behalf of itself and its related bodies corporate reserves ownership and intellectual property rights in all illustrations, drawings, plans, specifications formulas and

documents relating to the Products. Nothing in these Conditions operates or is intended to deny the Company or its related bodies corporate, or confer on the Customer, such rights or any other intellectual property rights in the Products.

11.2 If a third party asserts a claim for breach of its intellectual property rights arising from the supply or use of the Products the Customer shall immediately inform the Company and the Company shall be solely responsible for the defence, resolution and settlement of any such claim. The Customer shall at the Company's cost and request render such reasonable assistance as the Company requires in defending any such claim. In no circumstances shall the Customer acknowledge or concede the validity of any such claim except with the Company's express written consent. If any such claim against the Company succeeds, the Company shall at its option use its best endeavours to obtain a right to use or license any such intellectual property rights or modify the Products or replace them at its cost.

11.3 The Customer shall indemnify the Company for and in respect of claims by any third party in relation to the Products which arise from or can be attributed to the special requirements or specifications of the Customer, including the use or transfer of designs, logos, trade marks, holograms and stamping tools in the manufacture, production and labelling of the Products.

11.4 In this clause 11 a reference to intellectual property rights includes patents, trade marks, copyright, registered designs and licences and applications in respect of any of the above.

12 Confidentiality

The Customer shall not without the written consent of the Company disclose to any third party or use for any purpose other than

contemplated under the agreement of which these Conditions form part any proprietary or confidential documents, knowledge and information, tools, moulds, samples, models, profiles, drawings, data standard sheets, manuscripts and other technical documentation supplied or made known to the Customer by the Company.

13 Assignment

The agreement of which these Conditions form part is personal to the Customer and may only be assigned by it with the prior written and informed consent of the Company.

14 Waiver

No neglect, delay or indulgence on the part of the Company in enforcing these Conditions shall prejudice the rights of the Company or be construed as a waiver of any such rights.

15 Severability

If any one or part of these Conditions is illegal, invalid or unenforceable it shall be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it shall be severed from these Conditions, but in any event the remaining Conditions and any other provisions of the agreement of which these Conditions form part shall remain in full force and effect.

16 Governing Law

The Conditions and any agreement of which they form part are governed by and must be construed in accordance with the laws which apply in the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters or things arising out of these Conditions.