

TERMS AND CONDITIONS

1. **GENERAL**
 - (a) In these terms and conditions "the Company" means Kissel and Wolf Australia Pty Ltd Acn 006 956 976 trading as Kiwo,Ulano,Wilflex to which this application for credit is made and includes its successors and assigns and "the Buyer" means the entity which is applying for credit in the application overleaf.
 - (b) These terms and conditions shall apply to the exclusion of all others including any terms and conditions of the Buyer (whether on the Buyer's order form or otherwise). The Buyer acknowledges that these terms and conditions constitute the whole agreement between the parties unless otherwise agreed in writing.
2. **PRICES**

Orders are accepted on the condition that the goods will be invoiced at the price ruling at the date the goods are despatched. Unless specified to the contrary, prices quoted are exclusive of all GST, stamp duty and like levies or taxes. The company may amend prices at any time without prior notice. Quotes will remain valid for thirty (30) days from the date thereof.
3. **PAYMENT**

The Buyer shall make payment to the Company for all goods supplied within thirty (30) days from the end of the month the invoice was raised unless otherwise agreed in writing. The Buyer acknowledges that time is of the essence with regard to payment and that any breach of this term will enable the Company to exercise all of its rights contained herein including (but without in any way limiting its rights) the right to cancel further credit and to take legal action for the recovery of all sums outstanding. A deposit to be determined by the Company at the time of ordering by the Buyer will be required to be paid prior to the delivery of the goods to the Buyer. Credit Card payments shall be subject to a 1.5% transaction fee.
4. **INTEREST**

Should payment remain outstanding beyond the Company's payment terms as outlined in clause 3 above, the Buyer agrees to pay interest on all amounts outstanding from the due date until the date of payment at a rate equal to 2% above the Company's then overdraft rate as varied from time to time.
5. **COSTS**

Should payment remain outstanding beyond the Company's payment terms as outlined in clause 3, the Buyer agrees to pay all legal costs (on a solicitor/own Buyer basis) and all Mercantile Agent's fees (including any commission payable on the payment of the debt) incurred by the Company as a result of non-payment of the debt.
6. **DELIVERY**
 - (a) The Buyer will pay all transport costs to deliver the goods to its point of supply in the state in which the Buyer is resident unless agreed otherwise by the Company in writing.
 - (b) The Buyer is responsible for arranging delivery from the Company's point of supply in that state and will be liable for all freight and transport costs and insurance once the goods leave the possession of the Company.
 - (c) In the event that the Buyer specifies a delivery date, the Company shall use its best endeavours to comply with the Buyer's requests. In no circumstances will the Company be liable for any loss or damage of any kind whatsoever in the event that it is not able to comply with the Buyer's request for delivery at a certain time. The Buyer acknowledges and agrees that it will not make any claim against the Company for any loss or damage incurred as a result of late delivery.
 - (d) Delivery of the goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
 - (e) The Buyer shall not be entitled to repudiate the agreement as a result of the failure of the Company to deliver the goods.
7. **CLAIMS**
 - (a) It is the responsibility of the Buyer to check each delivery to ensure that the delivery is complete and in good condition. The Buyer will be deemed to have accepted the goods as being in accordance with its order and received in good condition unless it notifies the Company in writing of any claim within fourteen (14) days of receipt of the goods.
 - (b) The Company will not accept any return of goods unless it has given prior written authorisation for the return and unless the returned goods are in their original condition and packaging. The Buyer is responsible for payment of any freight or delivery costs to return any goods to the Company unless the Company agrees to pay such costs on the basis that the goods were delivered in a damaged condition.
8. **SUB-CONTRACTING**

The Buyer hereby authorises the company to sub-contract all or any part of the works that the company has been contracted to carry out. The company in doing so may be required to agree to the sub-contractors terms and conditions of trade and the carrying out of the work by the sub-contractor will deem the Buyer also bound by those terms and conditions. The sub-contractor in agreeing to carry out the work on behalf of the company shall also be deemed to have the benefit of these terms and conditions.
9. **JURISDICTION**

The proper law of all contracts arising between the Company and the Buyer is the law of the State of Victoria and the parties agree to submit to the jurisdiction of the Courts of that State.
10. **WARRANTY**
 - (a) All warranties whether express or implied and whether statutory or otherwise with regard to the goods supplied by the Company as to quality, fitness for purpose or any other matter are hereby excluded except in so far as any such warranties are incapable of exclusion at law.
 - (b) Where a manufacturer's warranty exists then the Buyer may only rely on such warranty and shall not be entitled to rescind or cancel the contract or sue the Company for damages or claim restitution arising out of any misrepresentation made to him by any servants or agents of the Company. The Buyer acknowledges that it has relied on its own skill and judgement in deciding to enter into this agreement and has not relied on any representation condition warranty covenant or promise made for and on behalf of the Company.
 - (c) Any warranty provided by the Company shall not cover any defect or damage which may be caused by:
 - (i) Failure on the part of the Buyer to properly maintain any Goods; or
 - (ii) Failure on the part of the Buyer to follow any instructions or guidelines provided by the Company; or
 - (iii) Any use of any Goods otherwise than for any application specified on any documentation supplied with the goods; or
 - (iv) The continued use of any Goods after any defect becomes apparent to a reasonably prudent operator or user; or
 - (v) Fair wear and tear, any accident or act of God.
 - (d) Any Warranty provided by the Company shall be voided in the event that the goods are repaired or altered or replaced without the Company's consent.
11. **INTELLECTUAL PROPERTY**
 - (a) The Company shall retain the copyright in all drawings of any products produced for the Buyer unless otherwise agreed in writing.
 - (b) If the Buyer provides the Company with any specifications, designs or drawings for the production or manufacture of any item or items then the Buyer hereby warrants that the use of these designs, drawing or specifications will not infringe any third party's rights and the Buyer hereby indemnifies the Company against any claims demands suits or actions in relation thereto.
12. **RIGHTS OF THE COMPANY TO DISPOSE OF GOODS**

In the event that the Company retains or regains possession of the goods ordered by the Buyer and the Buyer has not paid for the goods within the Company's terms of trade then the Company may dispose of the goods and may claim from the Buyer any loss the Company has suffered in relation to same.
13. **CHANGE OF OWNERSHIP**

The Buyer agrees to notify the Company in writing of any change of ownership of the Buyer within seven (7) days from the date of such change and indemnifies the Company against any loss or damage incurred by it as a result of the Buyer's failure to notify the Company of any change.
14. **CANCELLATION**

Orders placed with the Company cannot be cancelled without the written approval of the Company. In the event that the Company accepts the cancellation of any order placed with it, it shall be entitled to charge a reasonable fee for any work done on behalf of the Buyer to the date of the cancellation including a fee for the processing and acceptance of the Buyer's order and request for cancellation.
15. **LIEN**

The Buyer hereby acknowledges that the Company has a lien over all goods in its possession belonging to the Buyer to secure payment of any or all amounts outstanding from time to time.
16. **TITLE**
 - (a) Property in any goods sold by the Company shall not pass to the Buyer until the Buyer has paid for the goods in full and has paid all other monies outstanding under any other sale of goods by the Company to the Buyer.
 - (b) Risk of loss or damage to the goods passes to the Buyer with possession. Until payment of the purchase price (and all other monies outstanding) the Buyer is to insure the goods against all risk. Any insurance claim in respect of loss damage or destruction of the items or goods is hereby assigned to the Company.
 - (c) In the event that:-
 - (i) the Buyer has failed to pay for the goods as and when due;
 - (ii) the Buyer has breached any of the conditions of this Contract;
 - (iii) the Buyer commits an act of bankruptcy or becomes bankrupt;
 - (iv) a controller is appointed to the Buyer;
 - (v) the Buyer is placed under external administration;
 - (vi) the Buyer enters into a scheme of arrangement with its creditors;
 - (vii) execution is issued against the property of the Buyer and is returned unsatisfied; or
 - (viii) the Buyer is insolvent; and
 - (ix) then the Company may retake possession of any of its goods which have been supplied to the Buyer and for this purpose the Company may enter any premises belonging to or occupied by the Buyer. The Buyer hereby grants right of entry to the Company for the purpose of retaking possession of its goods and indemnifies the Company, its servants, agents and employees in relation to any loss or damage occurring as a result of retaking of possession of the goods.
 - (d) The Buyer hereby indemnifies the Company against any loss or damage to the goods howsoever arising.
 - (e) The Buyer is entitled to resell the goods in the usual course of its business but the Company is to be paid from the proceeds of the sale the purchase price owed to the Company (and all other monies outstanding including interest, costs and collection costs) which proceeds, to the extent of the purchase price (and all other monies outstanding including interest, costs and collection costs) shall be kept in a separate account and held by the Buyer in trust for the Company.
 - (f) The Buyer shall, on request, disclose to the Company all relevant information regarding the goods and any sale thereof by the Buyer.
17. **CHARGE**

The Buyer hereby charges all its property whatsoever whether currently owned by the Buyer or acquired in the future with its indebtedness to the company.
18. **CONSENT TO CREDIT CHECK - PRIVACY ACT**

The Buyer acknowledges and authorizes the Company pursuant to the provisions of the *Privacy Act* to:-
 - (a) seek from or give to a Credit Reporting Agency personal information about the Buyer at any time after signing this form; and
 - (b) contact any trade references or other credit providers and acquire from them or give to them personal information in relation to the Buyer and its credit worthiness.