

1.1 GENERAL: Orders are accepted and goods and services are sold to the customer ("Customer") by Kenelec Scientific ("KS") on these terms and conditions ("Terms") and any other terms and conditions contained in any or all of the following documents ("Contract Documents"): Rental Agreement, Calibration Agreement, Service Agreement, Installation Agreement, Loan Agreement, Equipment Maintenance Agreement, Order, Credit Application, Privacy Policy, Quotation or Tax Invoice.

- a. In the event of any inconsistency in the Contract Documents, these Terms will prevail.
- b. By placing an order Customer agrees to be bound by these Terms. These Terms constitute the entire agreement between the parties and no amendment or variation of the Terms or Contract Documents will be of any force and effect, unless expressly accepted by KS in writing.
- c. Customer agrees that KS is not bound by any terms and conditions contained in any document issued by Customer.
- d. The words 'goods' and/or 'services' includes equipment, instruments, advice, recommendations, information, assistance, installation, software, articles, accessories, documents, certificates, reports, operating manuals, and anything supplied with goods or services whether or not they were included in the Contract Documents.
- e. KS may change these Terms at any time. Customer acknowledges that any change to these Terms will take effect from the time that such change appears on www.kenelec.com.au ("Website").
- f. If any of the terms in these Terms are unenforceable, the term will be severed from these Terms without affecting the enforceability of the remaining Terms.
- g. These Terms do not create a relationship of agency, partnership, joint venture or employment between the parties. Neither party has any authority to act for or incur any liability or obligation on behalf of the other party in any manner.

1.2 PAYMENT TERMS: The price for goods and/or services is specified in the relevant KS invoice, quotation or other similar document provided by KS. Unless stated otherwise, KS may alter the price for goods and/or services at any time. KS will endeavour to provide Customer with prior notice. Terms of payment are either payment upfront upon placement of order (referred to as 'prepayment') or through a credit account. In certain circumstances KS may offer other payment terms as specified in a Contract Document. All prices quoted by KS are exclusive of GST. Time is of the essence in respect of Customer's obligation to pay for goods and/or services.

- a. Credit account: Payment is due 30 days from the date of invoice. KS reserves the right to refuse credit at any time at its own discretion. KS reserves the right to process credit applications based on customer's recent purchases, credit report and payment history and does not guarantee granting of credit. KS reserves the right to change the Customer's credit limit, decline credit, or close the account.
- b. Payment up front: Upon KS's request, Customer will provide the details of a credit card that KS may charge for invoiced costs. This card information may be stored in accordance with KS's Privacy Policy. Disposal of card information will occur once payment for goods and services is received in full by KS.

1.3 ORDERS: KS reserves the right to cancel, at any time before delivery and for whatever reason, an order that it has previously accepted. Once KS accepts an order, which may include items subject to a minimum order value (MOV), it cannot be cancelled or altered by Customer other than with the written consent of KS. Customer acknowledges that in placing an order with KS it has entered into a legally binding contract with KS subject to these Terms. KS reserves the right not to accept an order placed by the Customer, especially where MOV thresholds have not been met. Except to the extent otherwise required by law or as expressly set out in these Terms, KS will not be liable to Customer, or any other person, for any loss, damage, cost or expense suffered as a direct or indirect result of cancellation of Customer's Order.

1.4 PRIVACY: Customer accepts KS's privacy policy available on the Website and consents to KS collecting any personal information for the purposes set out in the privacy policy.

- a. Customer may access and correct any personal information KS holds about Customer on request. Customer acknowledges that if all information requested by KS is not disclosed, KS may not provide Customer with credit.
- b. Customer consents to KS or its associates contacting Customer electronically or otherwise to provide marketing or other information. KS may disclose, and Customer consents to such disclosure of, Customer's personal information to other KS entities or suppliers for information and marketing purposes.
- c. Customer agrees KS may assess credit worthiness by seeking information about Customer's, and Customer's related entities, personal or commercial credit arrangements and KS may obtain a credit report about Customer and Customer's related entities from a credit reporting agency at any time.
- d. KS reserves the right to refuse to proceed with any order if Customer's trade reference or credit report is considered by KS to be unsatisfactory.

2. PROPERTY RISK AND TITLE:

2.1 Any defined terms used in this clause but not defined in these Terms will have the meaning given to them in the *Personal Property Securities Act 2009 (Cth)* ('PPSA').

2.2 Customer assumes all risk of loss and damage to the goods upon shipment of the goods to Customer.

2.3 Legal and beneficial ownership in the goods will not pass to Customer until Customer has paid in full the price for those goods. Customer acknowledges that this constitutes a Security Agreement for the purposes of the PPSA and that a Security Interest exists in all goods supplied to Customer (and their proceeds).

2.4 Until all outstanding monies have been paid to KS for the goods delivered to Customer:

- a. Customer must separately store those goods in such a way that makes it clear that they are the property of KS;
- b. in the event of a default (specified in clause 11) KS or its representatives will be entitled, without the necessity of giving any notice, to

exercise the rights contained in section 123 of the PPSA to enter premises occupied by Customer to search for and remove any of those goods without in any way being liable to Customer, and may dispose of or retain such goods as KS sees fit. If the goods or any of them are wholly or partially attached to or incorporated in any other good, KS may (when practical) disconnect them in any way necessary to remove the goods; and

- c. all costs and expenses incurred by KS as a result of taking action in accordance with clause 2.4b, together with transportation and storage charges, must be paid by Customer to KS on demand.

2.5 Until title to the goods passes to Customer, Customer acknowledges and agrees:

- a. that the goods supplied and not resold are held by it as bailee for KS;
- b. that any resale of the goods must only be made on the condition the purchaser is expressly made aware of the existence of KS rights under this clause 12;
- c. if the goods have been resold by Customer, that Customer will hold the proceeds of sale on trust for KS immediately when they are receivable or received;
- d. when the proceeds held in trust for KS under clause 2.5c are received they must either be paid immediately to KS or held in a separate bank account as trustee for KS and they must not be used by Customer in any other way.

2.6 These Terms create a purchase money Security Interest ("PMSI") in the goods, any goods in which the goods are used as a component, and all proceeds from their respective resale by Customer. The Security Interest is granted to secure Customer's proper performance of the Agreement.

2.7 For the avoidance of doubt Customer acknowledges and agrees that it grants to KS a Security Interest in all goods supplied by KS to Customer whether now or in the future and in any proceeds from the sale of those goods.

2.8 The parties agree that pursuant to sections 115(1) and 115(7) of the PPSA the following sections of the PPSA will not apply to these Terms (to the extent permitted by law): sections 95, 96, 117, 118, 121(4) 125, 127 129, 130, 132, 134(2) 135, 136(3), 136(4), 136(5), 137, 142 and 143.

2.9 For the purposes of section 14(6) of the PPSA the parties agree that any payments received by KS from Customer pursuant to or in any way connected with these Terms will be applied in such order as KS deems fit in its absolute discretion.

2.10 Customer consents and agrees that:

- a. it must sign all documents and take all steps as KS may reasonably require in connection with the registration, perfection and enforcement of this PMSI; and
- b. all Goods remain the property of KS until paid in full. The Terms and each invoice issued under the Terms constitute a Security Agreement for the purposes of the PPSA, and create a Security Interest in all previously supplied and future supply of goods by KS to Customer; and
- c. the Security Interest(s) created by these Terms or any other document relating to the subject of these Terms may be registered with the relevant authority or public register; and
- d. KS is not obliged to give any notice or documents under the PPSA unless the relevant obligation cannot be excluded. Customer waives its right to be provided with verification statements pursuant to section 157 of the PPSA.

2.11 .

2.12 It is not intended by KS or Customer that by supplying or accepting goods and/or services on the Terms of this clause 2, to create a charge or mortgage over any goods supplied.

2.13 Customer agrees to indemnify KS against all expenses, losses, and damages incurred or sustained by KS (including legal costs on a solicitor and own Customer basis) as a result of or in relation to the exercise by KS of its rights under these Terms.

2.14 Customer authorises KS to search the Personal Property Securities Register at any time for any information about Customer.

3. DELIVERY AND DELIVERY DATE:

3.1 If KS provides a time or date for delivery, such date is an estimate only. KS shall take reasonable steps to deliver the goods on or about such time or date. However, KS shall not be liable for failure or delay in delivery or for any loss or damage resulting directly or indirectly from the failure or delay in delivery of the goods irrespective of whether any such failure or delay is negligent or is within KS's control or otherwise.

3.2 Any agreement or undertaking by KS to deliver the goods is contingent upon its ability to secure and/or supply the goods.

3.3 Customer shall accept delivery of the goods at the point of delivery that is agreed between the parties.

3.4 If there is a substantial delay on the part of Customer in accepting delivery of the goods, KS shall be entitled to charge to Customer such extra costs of storage and/or other expenses that may be incurred by KS. Risk in the goods will pass to Customer upon placement of the goods in storage.

4. INTEREST:

If Customer fails to pay the purchase price to KS in full in accordance with Clause 1 then, in addition to its other rights under these Terms, KS may charge Customer interest calculated from the day following the date upon which the payment should have been made at the rate of the 90-day Bank Bill Swap Reference rate for that day, plus 5%.

5. WAIVER OR ALTERATION:

5.1 No waiver or alteration of these Terms shall be binding upon KS unless a duly authorised officer of KS consents to the same in writing.

5.2 Customer warrants that any officers signing documents on Customer's behalf are duly authorised and all information provided by Customer is true and correct, not misleading and deceptive.

6. PERSONAL GUARANTEES:

If required, Customer, if a company, shall cause personal guarantees in a form acceptable to KS to be signed and delivered to KS prior to delivery of goods and/or services.

7. ACCOUNT KEEPING FEE, BANK CHARGES, ETC:

If required by KS, Customer will pay an account keeping fee (which may be varied by KS without notice) for transactions made with KS during each month and to pay an administration fee for any payments by credit card.

8. LIMITATION OF LIABILITY:

- 8.1** To the fullest extent permitted by law, KS makes no warranty in respect of the goods and/or services sold and limits all liability in respect of the goods and/or services.
- 8.2** Except as otherwise expressly provided in these Terms, and subject to clause 8.4, KS excludes all statements, representations, warranties, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law or otherwise), relating to the goods and/or services, whether as to the quality, fitness for any purpose, correspondence with any description or sample or otherwise, or their delivery, being provisions that might otherwise form part of these Terms or any Contract Documents or be collateral to or form part of any agreement that is collateral to these Terms or any Contract Documents. It is expressly acknowledged by the parties that the whole of the Terms save for any details entered on any Contract Documents are contained in these Terms.
- 8.3** Subject to clause 8.4 KS shall not be liable to compensate or indemnify Customer for any loss or damage suffered or incurred by Customer in relation to the goods and/or services, or their delivery (including but not limited to any loss or profits or other economic loss arising from negligence or any other tort in any case whether direct, indirect, consequential or otherwise).
- 8.4** Where Customer acquires goods and/or services as a 'consumer' within section 3 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ("Australian Consumer Law") these provisions do not, and no provision of these Terms exclude, restrict or modify or have the effect of excluding, restricting or modifying:
- a. the application of any provision of Australian Consumer Law in relation to the supply of goods and/or services;
 - b. the exercise of a right conferred by such provision, or
 - c. liability of KS for breach of condition or warranty implied by such a provision.
- 8.5** Where the Australian Consumer Law applies, the following is an additional term of this Agreement as required by law:

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to choose a refund or replacement for major failures with goods. For major failures with services, you are entitled:

- a. to cancel your service contract with us; and
- b. to a refund for the unused portion, or to compensation for its reduced value.

If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done, you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

- 8.6** Customer acknowledges it has assessed the suitability of the goods and/or services and is satisfied they are suitable for its purposes and will use them at its own risk.

9. LIMITATION OF CLAIMS:

- 9.1** Where legislation implies in these Terms any condition or warranty that cannot be excluded or modified, the liability of KS for a breach of such is limited, where applicable legislation allows such limitation, at KS's option to any one or more of the following:
- a. Services:- refunding the fee paid or supplying those services again.
 - b. Goods:- replacement with the same or an equivalent item, repair or refund.
- 9.2** KS may at its discretion choose which option in 9.1 shall apply provided that:
- a. KS is promptly notified of the defect;
 - b. Customer assumes payment or transportation charges to KS's Melbourne repair facility;
 - c. The defect was not caused by misuse in which case all costs shall be borne by Customer;
 - d. The goods and/or services were not purchased under terms granted in lieu of warranty and, if during the warranty period additional or substitute parts are supplied for the goods returned, warranty period shall not in any case extend beyond the warranty period offered from the date of delivery of original goods and/or services.
- 9.3** In some circumstances, the manufacturer of goods has given warranties for those goods ("Manufacturer's Warranty"). KS shall not be bound by nor be responsible for any term, condition, representation or warranty other than the Manufacturer's Warranty. KS will use its best endeavours to assist Customer with any claim in respect of the goods. When the manufacturer is an international entity, these warranties may only apply for a maximum of five years from the date of manufacture of the goods. KS makes no representation about the existence of any Manufacturer's Warranty nor the extent of such warranty in respect of Customer's purchase of goods.

10. JURISDICTION:

The parties agree and declare that any proceedings in respect of any cause arising hereunder is governed by the Laws of the State of Victoria and the application of the United Nations Convention on Contract Documents for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

11. CUSTOMER'S DEFAULT:

If Customer

- a. does not make any payment by the due date;
- b. exceeds its credit limit at any time;
- c. commits any other material breach of these Terms; or
- d. commits an insolvency event or is reasonably suspected by KS of committing an insolvency event,

KS may do any or all of the following:

- a. vary or withdraw any approved credit limit and/or terms of trade;
- b. cancel or suspend any unfilled orders or cease providing services;
- c. terminate any orders or Contract Documents with Customer and demand immediate payment;
- d. enter any premises where KS's goods are stored to reclaim possession without liability for trespass, negligence or compensation.

12. VARIATIONS OF PRICE:

- 12.1 KS reserves the right to change prices at any time and the current prices will be notified to Customer upon request for a quote.
- 12.2 Any quotation is based on the basic exchange rate ruling on the date of the quotation. Should the exchange rate at which KS settles its accounts with its overseas suppliers vary by more than one percent, such fluctuation will be an added cost to Customer.
- 12.3 All prices are based on the full quantities specified in Customer's Contract Documents and do not necessarily operate pro rata for any greater or lesser quantities.
- 12.4 A goods and services tax, value added tax and/or other similar tax will be charged at the appropriate rate in force at the time of invoice.
- 12.5 Prices include all imposts, charges and duties currently applicable and Customer shall be required to pay KS any further amounts that may become payable by KS as a result of any increase in the imposts, charges and duties applicable to the sales.
- 12.6 Where prices are quoted they are variable by an amount equivalent to the actual decrease or increase in the costs resulting from variations in freight and handling charges which vary in the costs from those current at the date of any offer, or outside the validity period.

13. RETURNS AND CLAIMS:

- 13.1 Customer must inspect goods or services immediately following delivery or completion and subject to the provisions of the *Australian Consumer Law* or any applicable consumer law, any claim must be received within 7 days of such delivery or completion.
- 13.2 If Customer fails to make a claim then, to the extent permitted by law, the goods and/or services are deemed to have been accepted by Customer and must be paid for in accordance with these Terms.
- 13.3 Any goods being returned are to be labelled and consigned to KS and the procedure to be followed for return is as follows:
 - a. an approval for return and an approval number must first be obtained from a duly authorised KS officer;
 - b. the goods to be returned must be in the original packing and all accessories are to be included;
 - c. the goods must be in an undamaged and saleable condition and KS's return approval number must be clearly visible;
 - d. the returned goods shall be accompanied by KS's claim form and Customer shall indicate the purchase invoice number and date and the reason for the return.
- 13.4 KS reserves the right to charge a re-stocking and administration fee to cover costs incurred if Customer cancels order or returns purchased goods. These charges may include freight costs incurred for the transportation of goods.

14. SPECIAL LICENCE:

In the event goods or a component of goods contain a copyright work or other thing to which intellectual property rights apply, usage shall be by licence only on the terms and conditions of the owner's licence. Customer shall not cause or permit to be done anything in contravention of such licence and is subject to all duties and responsibilities imposed by such licence.

15. ON-HIRING:

Customer agrees that until it has paid the full invoice price and any other payments due to KS in respect of the goods and/or services it must not on-hire the goods unless it receives the prior written consent of KS. KS's consent may be withheld in its absolute discretion.

16. NOTICES:

All notices to Customer shall be considered sufficiently delivered in the ordinary course of post to the last known address of Customer. All notices shall be deemed to have been delivered one day after mailing.

17. COLLECTION OF GOODS:

An official order must be presented to obtain any goods or services. Credit Approved Customers must provide a valid Purchase Order as requested to be approved by KS. Prepayment is otherwise required prior to the release or provision of any order.

18. FREIGHT CHARGES:

All prices quoted are (DAP) Delivered At Place (as defined in Incoterms® 2020, International Chamber of Commerce) to Customer's nominated destination, unless otherwise agreed in writing between the parties.

19. CUSTOMS AND EXCISE TARIFFS:

The duty owed, contained in any Contract Document, is an estimate only based on the tariff, item, or by-law considered by KS to be applicable. KS makes no warranty as to the accuracy of its estimate and Customer must assess the amount of duty applicable. Customer agrees to pay the actual duty owed price.

20. FORCE MAJEURE:

If, for any cause beyond KS's control including without limitation any act of God, war, strike, lock out, industrial dispute, governmental or semi-governmental award or restriction, fire, flood, storm, epidemics, pandemics, delay in obtaining licenses, transport, labour or materials, accidents, damage to KS's works or business or those of its suppliers, KS is prevented from making delivery or performance at the time stipulated, KS will be entitled at its option either to extend the time for delivery or performance for a reasonable period or to terminate the order. In those circumstances, Customer does not have any claim for damages and agrees to pay for all deliveries made or services performed prior to the date of termination and all expenses incurred and monies paid by Customer in connection with the order.

21. INSTALLATION/COMMISSIONING:

- 21.1** Installation or commissioning shall not be carried out by KS unless previously agreed in writing. Where KS undertakes installation or commissioning, it is Customer's responsibility to provide any services and utilities required including, but not limited to electrical, air, water and waste connections. Where special handling or lifting equipment is required all costs and risks shall be borne by Customer.
- 21.2** Installation will be made at the time specified in the Contract Documents and the goods will be at Customer's risk. Goods will be installed and placed in operating condition using test procedures and programs established by KS. KS shall not be obliged to install goods if the goods were modified without KS's approval or were subject to unusual stress, accident, misuse or other damage.
- 21.3** If KS employees or authorised representatives attend any premises as directed by Customer to install or apply any goods or perform any services, Customer will ensure appropriate policies and procedures are in place and followed to ensure the safety of the KS employees or authorised representatives and Customer will implement good industry practice and act consistently with KS policies as notified to Customer.
- 21.4** For any delay to KS installation or commissioning caused by site works, access problems or other causes outside KS's control (i.e., "force majeure" - see clause 20), additional labour and/or travel costs will be the responsibility of the customer.
- 21.5** KS will not be responsible for installation services other than those detailed in the Contract Documents.
- 21.6** Variation to the scope of the installation outside the original design parameters may result in re-evaluation and re-costing by KS.
- 21.7** KS warrants the installation works performed by KS or its subcontractors, but does not warrant other equipment connected to the installation provided by other suppliers, or related works performed by other suppliers.

22. GOODS ON APPROVAL:

This clause applies if goods are loaned to Customer on approval ("Loan Goods").

- 22.1** Where KS provides Customer with Loan Goods (and including any accessories) then Customer must:
 - a. only use the Loan Goods for normal daily use and for evaluation purposes and in the manner in which the KS directs;
 - b. exercise the utmost care and diligence in relation to the Loan Goods;
 - c. not sell, hire, re-loan, demonstrate to a third party or use in a commercial manner the Loan Goods or otherwise charge, pledge or part with possession of them;
 - d. not alter, modify, tamper or make any other adjustments to the Loan Goods;
 - e. where goods were originally supplied in a special manufacturer's carton, they must be returned in that original carton and the goods must be in their original and unmarked condition, complete with any instruction sheets supplied.
- 22.2** Customer warrants that it has the necessary skill and expertise to enable the Loan Goods to be sufficiently evaluated so as not to cause loss or damage to them.
- 22.3** KS may request the return of the Loan Goods at any time without notice.
- 22.4** If KS requests the return of the Loan Goods, or the loan period ends without Customer buying the Loan Goods, Customer must promptly return the Loan Goods to KS at Customer's expense.
- 22.5** If, on return to KS, the Loan Goods require repair (including realignment) to restore them to their condition at the time of the initial loan, KS will be entitled to recover from Customer the reasonable cost of repairing or replacing them. If they are used with bio-hazardous materials, the Loan Goods must be cleaned and/or decontaminated at Customer's expense prior to return.
- 22.6** The loan period may only be extended if Customer has obtained the written consent of KS.
- 22.7** The Loan Goods remain the property of KS. Customer must insure them with a reputable insurance company against any loss to Loan Goods, damage to real and personal property or injury to, or death of, any person caused by the use of the Loan Goods by Customer. Customer indemnifies KS for any loss or damage to the Loan Goods and for any damage to real and personal property or injury to, or death of, any person caused by the use of the Loan Goods by Customer.

23. EQUIPMENT MAINTENANCE SERVICES:

This clause applies where KS provides equipment maintenance services ("Equipment Maintenance Services") to Customer in return for the service fee as set out in the Contract Documents.

- 23.1** Customer will pay the service fee to KS in accordance with the Contract Documents and KS reserves the right to vary the service fee payable for Equipment Maintenance Services.
- 23.2** Equipment Maintenance Services will be provided for the period specified in the Contract Documents and will then continue automatically to be renewed for further 12 month periods unless terminated by either party at least 30 days prior to the start of a new 12 month period.
- 23.3** Equipment Maintenance Services will be performed by a service engineer or authorised contractor who will make the specified number of routine calls during the service period (as set out in the Contract Documents).
- 23.4** Equipment Maintenance Services does not cover repair, damage due to fire, water, accident, abuse, negligence, wilful act or default by Customer. Abuse includes any damage resulting from the operation of the goods and/or services other than in accordance with the operating instructions provided by the manufacturer, its representatives, or those of KS.
- 23.5** Customer must notify KS of any change in location of the goods being maintained. KS may terminate the order or increase the service fee if additional costs would result from the location change.
- 23.6** In addition to KS' general rights of termination, KS reserves the right to terminate this agreement if the goods, serviced equipment, or loan goods are repaired or modified without KS prior knowledge or consent or KS ceases to have rights to distribute the goods or to provide the services. Customer releases KS from any liability if these terms and conditions are terminated under this clause.

24. CALIBRATION AND REPAIR SERVICES:

- 24.1** KS will supply services to Customer for verification of equipment accuracy to the agreed specification by comparison with a reference standard ("Calibration Service") and, at KS' discretion, may provide any adjustment and/or re-verification services.
- 24.2** Any of the following events are deemed to be variations:
- Customer requests changes, additions or variations to the goods or services as outlined in the Contract Documents or as agreed in writing;
 - KS determines during a Calibration Service the goods require a repair service;
 - The goods are unusually dirty or contaminated and require cleaning or decontamination.
- If there is a variation pursuant to this clause, KS may reject the request for variation or provide a revised fee for the goods or services.
- 24.3** Customer is entirely responsible for ensuring goods are calibrated and serviced at appropriate frequency.
- 24.4** Before returning products to KS, the customer must complete a Return Materials Authorisation ("RMA"). Goods received without an RMA will be held for 14 days. If an RMA cannot be obtained during that period KS will return the goods and seek to recover freight costs.
- 24.5** Customer must organise transport of goods to and from KS unless they request that KS organise return freight. Customer is responsible for all costs associated with the transport of goods to and from KS.
- 24.6** Customer bears all risk of loss or damage of goods while in transit or at KS.
- 24.7** Customer must provide the goods properly cleaned, packaged and in good order.
- 24.8** Customer must ensure that the goods are clearly and permanently marked with a distinguishing number or symbol to ensure identification.
- 24.9** Customer must ensure each package is marked with the contents, and the name, address and telephone number of a technical contact person.
- 24.10** Customer acknowledges KS owns the copyright in any report or services rendered and reproduction of that data in any way without the consent of KS will constitute a breach of the *Copyright Act 1968 (Cth)*.
- 24.11** KS does not warrant the accuracy or completeness of the information contained in any report or service and any person using or relying upon such information does so on the basis that KS accepts no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information supplied.
- 24.12** Customer indemnifies KS for all harm (including costs on a solicitor and own customer basis) that KS may suffer as a result of any claim by a third party involving Customer's use of any KS report.
- 24.13** Customer must, if required in writing by KS, maintain and provide evidence of adequate professional indemnity, product liability and third party liability insurance to cover its obligations and exercise of rights under this Contract;
- 24.14** Customer acknowledges that KS may, by notice in writing, delay the performance of its obligations under this Contract because of its limited resources, other research priorities, or delays by Customer in providing the goods; and is not liable for any failure to carry out part or all of its obligations under this Contract if that failure is due to any cause beyond the reasonable control of KS.
- 24.15** KS retains ownership of KS' report copyright and with effect immediately after KS has been paid the fee, grants Customer a non-exclusive, royalty free licence to use KS' report copyright for the purpose of reporting measurement results for Customer's own internal activities.
- 24.16** Uncollected goods will be disposed of in accordance with the provisions of the Australian Consumer Law and *Fair Trading Act 2012* or its successors.

25. RENTAL OF GOODS:

- 25.1**
- Customer will pay a rental fee if goods are hired or rented ("Rental Goods") from KS in accordance with the payment terms specified in an order or other Contract Documents. In the event the rental period is extended, the rental fee agreed for the initial rental period will be applied to the extension period. At its discretion, KS may vary the rate where the extension is significantly longer than the initial rental period. Rental contracts are always quoted in Australian Dollars.
 - Rental Period ("Rental Period") means the period commencing on the date of delivery of Rental Goods and concluding on the end date as specified. For the purposes of calculating the Rental Period, a day is any day excluding Saturday, Sunday, or a Public

Holiday in the state or territory where the equipment is rented. A week shall be a calendar week, a fortnight shall be two weeks, and a month shall be a calendar month. A long term rental contract is for a period of 6 months or longer.

- c. To qualify to rent on a cash account, Customer must supply a valid major credit or debit card with available credit. Credit card details will be held on file by KS for the duration of the hire period including hire extensions and until all hired goods are received back to KS in a satisfactory and merchantable condition. At the end of the hire and upon return of all goods in satisfactory condition, credit card and personal information will be destroyed by KS.
 - d. Customer consents to the use of any credit card held on file as payment for periodic invoices which are raised for extensions to Customer's hire and for further additional costs incurred over the duration of Customer's hire. These costs may also include and are not limited to applicable freight charges, cleaning of goods, repairs and damages and the replacement of lost or stolen goods which KS will invoice Customer for.
 - e. Customers with prior approval for Credit must supply a valid company purchase order confirming and covering relevant hire request and associated fees and transport costs. New or amended purchase orders may be requested in the event an extension to hire is requested or required and must be provided. Should an amended purchase order for extension not be supplied, KS will continue to bill Customer in line with the existing billing period being extended until such time goods are returned, and invoices will be issued and payable.
 - f. For the purpose of security and identification to support your application KS may request that you provide one or more forms of identification. A copy of your identification will be held on file for the duration of the hire and until such time that goods are returned in full in a satisfactory condition. KS may request a valid Australian Driver's License, valid Australian Passport or valid Credit Card. A Credit Report may also be obtained.
 - g. KS will provide a Rental Agreement Form with Terms and Conditions. Customer, where applicable, is to accurately complete, sign and return the Rental Agreement Form. By signing Customer agrees to accept KS clauses covered throughout these Terms and Conditions.
 - h. Customer is to provide KS with notification immediately of any change of company, payment or contact details which may occur during the period of your hire. Such changes may need to be confirmed in writing and KS may request and require that a new contract or related forms be signed and agreed upon for the hire to continue. KS reserves the right to cancel the Rental Agreement at any time should changes to details not be accepted.
- 25.2** Customer must only use those Rental Goods for the purpose for which they are manufactured and in accordance with the manufacturer's instructions and not sell, hire, re-loan, demonstrate to a third party or use in a commercial manner the Rental Goods or otherwise charge, pledge or part with possession of them without the written permission of KS.
- 25.3** Customer must exercise the utmost care and diligence in relation to the Rental Goods and keep them at the address specified unless KS gives written permission to relocate them elsewhere and not remove any logo, label or other identification for the goods giving notice of KS' ownership of the Rental Goods. Customer will pay KS a refurbishing fee if serial numbers, ownership labels, or other notices affixed to rental goods are removed, concealed or defaced.
- 25.4** Customer must notify KS immediately if the Rental Goods breakdown or require repair and not cause any repairs, adjustments, modifications or other work to be done on the Rental Goods without KS' consent. KS' officers may enter Customer's premises in order to inspect the Rental Goods or carry out repairs.
- 25.5** Customer shall return, at their expense, Rental Goods using a professional freight courier (specifically not by post) and must return goods in the same packaging in which they were delivered. KS reserves the right to charge for packaging materials not returned. Customer will pay the full replacement cost of any rental item (including operating manuals) not returned, as determined by KS. Rental Goods must be returned clean and in good working order. If they are not returned in this manner KS will recover from Customer the reasonable cost of cleaning, repairing or replacing them.
- 25.6** If the Rental Goods are used with hazardous materials, they must be decontaminated at Customer's expense prior to return. KS must be notified by Customer immediately if Rental Goods are being intended for use, used or in contact with Dangerous Goods & Hazardous Substances.
- 25.7** Customer will remain responsible for the rental charges, loss or damage to the hired items and any included accessories (up to the full value of the item), the KS Claims Management Fee, Damage Assessment Fee, any storage charges, loss of rental income, any repossession charges incurred to recover the items and other losses, administration fees or expenses related to the incident.
- 25.8** Rented goods must be returned to KS at the completion of the rental period. If Rental Goods are returned damaged, or with items missing, the Rental Period extends until the date that they are repaired by KS or the replacement cost of goods are paid by Customer. If the Rental Goods are not returned upon the expiration of the Rental Contract (or a tracking number provided as evidence of the return of the goods) then the daily rental rate may be charged (at KS' discretion) and shall continue to accrue until the Rental Goods are returned. If the Rental Goods are to be picked up or returned to or from KS' premises, the goods may be picked up between 3:30-5pm the day before the contract begins, and returned between 8:30-10am the day after the contract expires.
- 25.9** The Rental Period may only be extended if Customer has obtained KS written consent. The Rental Goods remain the property of KS at all times. Customer must from time of delivery until return to KS insure the Rental Goods with a reputable insurance company against any loss to the Rental Goods, damage to real and personal property or injury to or death of any person caused by the use of the Rental Goods by Customer. Customer indemnifies KS for any loss or damage to the Rental Goods, or loss of or damage to real and personal property, or injury to or death of any person caused by the use of the Rental Goods by Customer.
- 25.10** Should Customer choose to return Rental Goods prior to the end of the billing or agreed hire period, Customer may be liable for charges billed for the period at the rental charge rate closest to the actual rental duration. KS reserves the right to issue or not issue a refund in the event of early return of Rental Goods. Any request for a refund in such circumstances must be made within 30 days of the return of the Rental Goods.
- 25.11** Cancellation and Administration Fees may apply where the Customer requires cancellation, or modification to any aspect, of a signed Rental Agreement with reserved Rental Goods. These fees may extend to freight fees and other expenses incurred by KS as a result of the cancellation. KS may bill Customer for these Fees.
- 25.12** In the event that Customer seeks to purchase Rental Goods and KS agrees to sell the goods, the property shall not pass from KS ownership until and unless all rental fees and the purchase price have been received by KS. A quote to purchase will be provided by KS upon request of the customer. Rental fees shall continue to accrue and be billed with payment required until the full quoted sale purchase price has been paid. Payments received shall be applied first in reduction of rental fees and second on account of the purchase price Rental fees remain applicable and are separate from the sale cost to purchase any rental unit.

- 25.13** In the event of a change to Rental Rates, KS reserves the right to amend the Rental Rate at the end of the Rental Billing period. KS will provide notification to Customer of the new rate change in advance before enforcement. Customer may accept the new rental rate and continue with the hire in accordance with Terms or will finish the rental contract at the end of the existing billing period and return Rental Goods.
- 25.14** Should Customer continue to keep Rental Goods in possession past the existing Billing Period without acceptance of the new rate after having received notification or with dispute of such increase, changes to the rate will remain effective immediately upon new Billing Period and will be invoiced by KS. The new charges will be applicable and charged in line with Payment Terms. KS reserves the right to request the return of Rental Goods should the new rate not be accepted by Customer.
- 25.15** KS takes no responsibility for any of the following: loss of Rental Goods data, loss of income or revenue, loss of credibility, death or injury, loss of equipment, loss of time, damages caused to Rental Goods, delays to the delivery of Rental Goods whilst in transit.

26. WEB HOSTING:

- 26.1** KS will set up a web hosting service on behalf of Customer which will be supplied for data retrieval.
- a.** For the purpose of activating, maintaining or renewing the web hosting service, Customer agrees to provide KS with a valid order including complete and current contact and billing information in addition to specifications for the quantity of data loggers required and the duration of time for which Customer requires the service for.
 - b.** Customer agrees to notify KS immediately in writing of any changes or variations to requirements and billing or contact information. Customer must provide a new order to confirm changes. Failure to do so may result in the web hosting service becoming temporarily disabled or cancelled at the discretion of KS.
- 26.2** All equipment and services are tested before release by KS. It is Customer's responsibility as a subscriber to test all equipment upon arrival. Failure to perform these tests from time to time, to verify system operation may result in any, or all the following situations: 1. Loss of some or all data. 2. Failure to receive SMS or email alerts. 3. Incorrect or corrupt data.
- a.** Customer will be responsible for all data extracted from the web hosting service facility.
 - b.** Where the web hosting service is cancelled or disabled for any reason, KS will not be responsible for the retention or archiving of any data collected by Customer.
 - c.** KS takes no responsibility for any of the following: Loss of data, Loss of income or revenue, Loss of credibility, death or injury, Loss of equipment, Loss of time.
- 26.3** The web hosting service will incur a fee for which Customer is liable. Customer agrees to pay related costs as invoiced by KS and in accordance with agreed upon payment terms, terms specified in an order or other contract documents.
- a.** Upon placement of an order for the commencement of the web hosting service or for the renewal of an existing service, KS will issue an invoice which will indicate the service as active with applicable fees and terms.
 - b.** Failure to provide payment to KS for the web hosting service in accordance with terms will result in the service becoming disabled or cancelled.
 - c.** Customer acknowledges that fees charged for the web hosting service are non-refundable and no credits will be issued.
- 26.4** KS may notify Customer with reminders if the web hosting service nears its end date and may send a final reminder on the final service date advising that the service may be disabled.
- a.** If no valid order to renew and continue the webhosting service is received from Customer after one week from the final service date, KS reserves the right to disable the web hosting service without further notice.