

These are Terms and Conditions of Quotation and Sale of all products and services supplied by Kavanagh Industries Pty Ltd (ACN 002 776 981) Pty Ltd ABN 22 002 776 981 ("Company"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of the Company and the customer, these Terms and Conditions will apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any customer.

General

1. All orders placed with the Company are subject to these Terms and Conditions and the Company may at any time, and from time to time vary or alter these Terms and Conditions. A copy of the current Terms and Conditions are located on our website.
2. Quotations are valid for a period of 30 calendar days from the date of issue, after which time rise and fall provisions will apply.
3. If a customer cancels or alters any order or part order for special products or standard products with special materials at any time after the Company has received the order, then the Company reserves the right to charge to the customer the cost of the special products and materials already acquired for the order together with cost of the labour and tooling expended to the date of such cancellation or alteration.
4. The Company may in its absolute discretion do any of the following:
 - a) Refuse to accept an order for works, whether received from an existing customer or a new customer;
 - b) Cancel an order for works at any time after it is received by the CompanyAnd the Company will not be liable for any damages, loss or compensation arising from its decision to refuse to accept an order or to cancel an order after it has been received by the Company
5. The Company is not required to provide the customer for any reason or justification for a decision to refuse or cancel an order pursuant to paragraph 4 above.
6. Commencement of works based on this quotation is subject to Credit Department Approval from the Company.
7. If any materials specified within this quotation become unavailable prior to installation, the Company in its absolute discretion may substitute a reasonable alternative as long as it meets the relevant standard.
8. Any representation, warranty, condition or undertaking that would be implied into these Terms and Conditions by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law. Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on a party by the Competition and Consumer Act 2010 or any other applicable Australian law that cannot be excluded, restricted or modified by agreement.

Pricing

9. If there is any error or omission in the quotation contract, the Company reserves the right to amend the quotation contract price. This clause applies even if the quotation contract has been accepted by the customer.
10. Prices quoted are subject to any changes as per final construction drawings.
11. Unless otherwise stated, all prices quoted are GST exclusive. GST will be added in relation to delivery, supply and installation of all goods and services.

Terms of Payment

12. All payments due to the Company are to be made, without retention, within thirty (30) calendar days (net) after the issue of an invoice to the customer by the Company. Payment will be considered to be made when the funds are cleared in the Company's nominated bank account.
13. If the customer fails to make payment in accordance with the terms of clause 9, the Company will be entitled to:
 - a) charge default interest at the rate of 10% per annum on all overdue amounts (including late payment charges and amounts other than the price) calculated daily on and from the due date for payment and the parties agree that any amount so calculated is not a penalty but rather an accurate pre-estimate of the damage to be incurred by the Company. Payments received from the customer will be credited first against any default interest, then in payment of services and then against payment of any goods, and all such charges will be payable on demand;
 - b) claim from the customer, all costs relating to any action taken by the Company to recover money due from the customer including any legal costs and disbursements on a solicitor-client basis;
 - c) cease all work remaining to be performed by the Company under the quotation contract and terminate any agreement in relation to delivery of materials that have not been delivered prior to the customer's default; and
 - d) require the payment of cash upon delivery and erection of any further products.

Delivery & Inspection

14. Any date or time quoted is an estimate only and the Company will endeavour to meet that estimate, but failure to do so will not confer on the customer any right of cancellation on the customer's part or render the Company liable for any loss or damages directly or indirectly sustained by the customer as a result thereof.
15. The Company's obligation to deliver will be discharged on arrival of the products at the customers nominated delivery destination, nominated transport company, nominated agent or the address appearing on the quotation.
16. The customer will examine the products immediately after delivery and the Company will not be liable for any mis-delivery, shortage, defect or damage unless the Company receive details in writing within 5 calendar days of the date of delivery of the products.

Property and Risk

17. Notwithstanding delivery and/or installation of products, title in any products supplied and/or installed will remain with the Company until the customer has paid and discharged any and all indebtedness to the Company on any account whatsoever including all applicable sales taxes and other taxes, levies and duties. Any payment made by or on behalf of a customer that is later avoided by the application of any Statutory Provision will be deemed not to discharge the customer's indebtedness and in such an event the parties are to be restored to rights each respectively would have had if the payment had not been made.
18. The risk in any products supplied and/or installed will pass to the customer upon delivery (actual or constructive) to the customer.
19. The customer acknowledges that if he is in possession of any products supplied and/or installed, he holds such, solely as a fiduciary bailee for the Company until payment has been made in full to the Company as described in clause 12.
20. To the extent permitted at law, the Company will not be liable to the customer or any third party for liquidated damages in any form, any delay costs, consequential loss including (without limitation) any loss of profits, loss of revenue, loss of production, loss of business opportunity, loss of goodwill, loss of business reputation, economic loss or any indirect, remote and/or unforeseeable loss. The aggregate liability of the Company in damages (however arising) in respect of any act or omission of the Company's in connection with its obligations under these Terms and Conditions will not exceed the amount of one hundred dollars (AUD\$100), even if the Company has been advised by the customer as to the possibility of such loss being incurred.
21. As security for payment, the customer (and where applicable each Guarantor) agrees to grant the Company a Security Interest (as defined in the *Personal Property Securities Act 2009* (Cth) ("**PPSA**") in all products and services supplied by the Company, the outstanding payments to the Company and all after acquired property and an irrevocable right register this interest against it or its property (as the case may be) on the Personal Property Securities Register established under Chapter 5 of the PPSA ("**Register**") including (without limitation) where applicable, as a purchase money security interest. The customer grants the Company an irrevocable right to search the Register from time to time in relation to it or its property. The customer agrees for the purposes of the PPSA and to the extent permitted by law, Sections 95, 121(4) 128, 129, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA have no application to these arrangements and the Company is not required to give notice under section 135 of the PPSA. If the Company receives any notice in relation to the customer under section 64 of the PPSA, all outstanding payments will become immediately due and payable. The customer agrees to pass such resolutions, execute and sign any documents or forms, as required from time to time to formalise, affirm or perfect the said Security Interest.

Force Majeure

22. The Company will not be liable for any failure or delay in supply, delivery or installation where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of the Company including, but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storms or tempest, vandalism or riot, civil commotions or accidents of any kind (each an "Event of Force Majeure"). The Company's obligations will be suspended until the Event of Force Majeure ceases to cause the failure or delay (as the case may be). The customer will not be relieved of any obligation to make payment to the Company regardless of any party being affected by an Event of Force Majeure.
23. The customer hereby irrevocably grants to the Company its agents and servants an unrestricted licence, without notice, to enter premises occupied by the customer to identify and remove any of the products the property of the Company or which the Company has a Security Interest in, in accordance with these Terms and Conditions of Quotation and Sale without in any way being liable to the customer or any person claiming through the customer. The Company will have the right to sell or dispose of any such products removed or otherwise in its sole discretion and will not be liable for any loss occasioned thereby.
24. The Company licences the customer to install the products if appropriate. If the products are affixed to other materials the totality thereof will be the sole and exclusive property of the Company until payment as defined in clause 10 has been made in full to the Company unless the other materials or part thereof are or is the property of a party or parties other than the customers in which case the totality thereof will be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by the customer in respect of such other party or parties.

Termination

25. If the customer fails to comply with any of these Terms and Conditions or the Credit Application Terms (if applicable) being a natural person or persons commits any act of bankruptcy or being a corporation passes a resolution for winding up or liquidation (other than for the purpose of reorganisation or reconstruction) or enters into any composition or arrangement with creditors or if a receiver, manager, receiver manager or administrator is appointed for any property or assets of the customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a Liquidator or Provisional Liquidator is appointed, the Company may, in addition to exercising all or any of its rights against the customer, suspend any further deliveries and immediately enter premises occupied by the customer to recover possession of any products not paid for in accordance with these Terms and Conditions without in any way being liable to the customer or any person claiming through the customer.

Installation

26. It is the responsibility of the customer to ensure that installation can be completed without interruption on the mutually agreed date. The Company reserves the right to charge the customer any extra costs incurred by the Company by virtue of interruption, including travel costs.
27. The customer will be fully responsible to ensure that plumbing, electrical installations and any other installations not specified within this quotation do not foul the ducting in associated areas. The customer will be fully responsible for any necessary co-ordination of services.

Governing Law & Jurisdiction

28. The customer agrees that these Terms and Conditions will be construed according to the Laws of the State of New South Wales. The customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the Laws of New South Wales.