



**KONTROLS AND INDUSTRIAL WEIGHING PTY.
LTD.**

CONDITIONS OF SALE
(ISSUE JULY 1998)

1. GENERAL

All Kontrols equipment and services are sold or supplied subject to the following terms and conditions unless these are modified in writing signed by the General Manager. Customer's acceptance of delivery of equipment or performance of services shall constitute acceptance of these terms and conditions.

2. OTHER CONDITIONS

If customer's order incorporates other conditions they shall not take effect unless Kontrols expressly agrees to them in writing signed by the General Manager.

3. PRICES

Prices quoted are firm and based on Kontrols' costs at date of quotation for freight and insurance and on rates of customs or other duties applying at that date. Variations in such costs or duties and any other fiscal charges introduced by any government shall be for customer's account. Prices quoted are exclusive of Australian sales tax or New Zealand goods and services tax. In Australia a signed tax declaration must be quoted to Kontrols before invoicing or sales tax will be charged. Packing and handling charges will apply to all orders.

4. ACCEPTANCE OF ORDER

Customer's order will be accepted only after suitable credit arrangements have been made with Kontrols' Credit Manager.

5. TERMS OF PAYMENT

Terms of payment are strictly 30 days net from date of invoice, notwithstanding that equipment may not yet have been installed or commissioned. Kontrols may charge interest on overdue payments at overdraft rate or at its option in accordance with statute.

Invoices are issued when equipment is despatched within Australia or New Zealand to the customer or upon completion or ordered services. If the customer is not ready to accept delivery and has not indicated a delivery date invoices will still be issued.

Where a contract provides for installation and/or commissioning, additional invoices for these services will be issued after their completion, or if completion is delayed by parties other than Kontrols, Kontrols may issue additional invoices for partly completed work.

6. VALIDITY

Unless otherwise specified, contracts are valid for 60 days.

7. RATE OF EXCHANGE

Prices quoted are subject to exchange rate variation. Kontrols may claim as an increase in the quoted price any positive amount or the customer may claim as a reduction thereof any negative amount, which results from the application of the following formula:

$$(P \text{ multiplied } Q \text{ divide } L) \text{ minus } P$$

Where P is the quoted price in A\$ or NZ\$, or such proportion thereof as is stated in the quotation to be subject to variation. Q is the amount in US\$ stated in the quotation to be equivalent to A\$1.00 or NZ\$1.00.

L is the amount in \$US equivalent to A\$1.00 at the fair rate of exchange established by the Comptroller of Customs for the date of Customs valuation of the equipment; or- NZ\$1.00 at the T/T sell exchange rate of Westpac at the date of invoice

Claims for variation by either party must be made within 120 days from date of invoice and are to be settled within 30 days.

8. WARRANTY

- a. Unless otherwise specified, equipment (other than spare parts) is warranted for 12 months from date of invoice against defects attributable to faulty workmanship or material, fair wear and tear being excluded.
- b. This warranty does not cover normal servicing of the equipment, nor does it cover thermionic valves, laser light sources, energy dispersive detectors, electrodes, cathode ray tubes, hollow cathode lamps, X-ray tubes or other high vacuum, technology electronic components or high voltage rectifiers, all of which are covered by special factory guarantees.
- c. Damage or defects caused by incorrect use or failure to observe recommended operating conditions is not covered by this warranty.
- d. This warranty only covers the cost of repairing, or replacing at Kontrols' option, faulty equipment, cost of travel and subsistence for Kontrols' servicemen when equipment cannot be returned to Kontrols' service workshops the cost of removal or reinstallation, or freight costs to and from service workshops will be for customer's account.
- e. Damage or defects which result from installation, servicing, alteration or repair by any person other than our authorised representatives is not covered by this warranty.
- f. Third party equipment (non Kontrols items) will only be warranted under the conditions of the supplier and the warranty shall not exceed 12 months from date of invoice.
- g. Maintenance and repair services are warranted for 60 days from completion. This warranty covers only the work actually performed and spare parts installed by a Kontrols service engineer.

Except as herein otherwise provided, all conditions or warranties in respect of equipment and any services supplied in relation thereto, express or implied, statutory or otherwise, are hereby excluded. Under no circumstances shall Kontrols be liable to pay compensation for any injury, loss or damage

sustained by customer howsoever arising; provided always however, that in respect of equipment or services sold or supplied in Australia nothing in this paragraph shall affect the rights of the customer or any other person in respect of equipment which has a defect within the meaning of Part VA of the Trade Practices Act, 1974 or the rights of a customer who has acquired the equipment or services as a 'consumer' within the meaning of the said Act and the equipment and (where applicable) the services to be supplied by Kontrols are respectively not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of Kontrols for a breach of a condition or warranty implied by the said Act (other than a condition or warranty implied by Section 69) shall be limited:

- a. In the case of equipment, to the repair of the equipment or, at the option of Kontrols, the replacement of the equipment or the supply of equivalent equipment; or
- b. In the case of installation commissioning or other services, to the supplying of those services again.

9. INSTALLATION AND COMMISSIONING

The cost of installing and/or commissioning equipment will generally be quoted separately. When a fixed price is quoted, it is understood that;

- a. The site and specified facilities (water, power sockets, etc.) will be available and accessible continuously;
- b. Equipment will be on site in its final location and not in the store to which it may have been delivered.
- c. When Kontrols specifies that it need the assistance of electricians, plumbers, fitters, welders, riggers or any other tradesman or labour such assistance will be provided by customer at its own cost.
- d. Material or samples will be available to enable the equipment to be commissioned and tested and a responsible person will be present formally to accept the equipment: eg. make up weights, calibration weights and facilities for the handling of these, will be made available by the customer free of charge to Kontrols;
- e. If work has to be done outside normal working hours at the customer's request an additional charge will be made based on the difference between overtime and standard rates;
- f. Prices quoted are based on labour and material costs calculated to apply when installation, commissioning, maintenance, repair or other services are required. Any additional costs arising from any delay resulting from non compliance with subclauses a. to e. above, or from any other circumstance beyond the control of Kontrols, will be charged at prevailing standard rates in addition to the price quoted.

10. CANCELLATION OF ORDERS

- a. Orders are firm and not subject to cancellation.
- b. In exceptional cases the General Manager may at his discretion issue a written authorisation for the return of equipment or for cancellation.

- c. Except where Kontrols is at fault, customer will by accepting such authorisation become liable to indemnify Kontrols against all loss and expenses including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in equipment or installation and all labour and engineering costs incurred by Kontrols in the execution or part execution of services and including also compensation payable to any supplier to Kontrols and loss of profit.
- d. Equipment sent back to Kontrols without the written authorisation referred to in b. above will not be accepted.

11. SUSPENSION OR CANCELLATION OF DELIVERY

Kontrols reserves the right to suspend, delay or cancel the delivery of some or all of the equipment or any installation or other services or to require advance payment if:

- a. Customer is insolvent or is unable to pay its debts, or seeks to effect any compromise with any of its creditors or compound any of its debts.
- b. Any order is made or resolution passed for the winding up of customer or if customer is placed in receivership or under official management;
- c. Any judgement is given against customer in any court of law and, if applicable, is not appealed against within the period allowed for the lodging of such an appeal, or if not subject to an appeal, remains unsatisfied for a period of 10 days; or
- d. Customer is in breach of any of its obligations to Kontrols.

No suspension, delay or cancellation as a result of any of the foregoing events shall affect any other right which Kontrols may have against the customer in terms of the contract or otherwise.

12. INABILITY TO SUPPLY

If Kontrols cannot deliver some or all of the equipment or cannot complete any installation or other services for any reason beyond its control, including but not limited to lack of instruction from the customer, stock shortage, industrial dispute or break-down, government action, state of war, riot, civil disturbance or act of God, Kontrols may, in its discretion, cancel or suspend or delay its performance of the whole or any part of the contract. In the event of such cancellation or suspension Kontrols shall not be liable for any loss (including loss of profits) thereby caused.

Equipment offered ex stock is subject to prior sale.

13. MINOR VARIATION

All sizes, weights and other specifications given by Kontrols are approximate only. Kontrols reserves the right to supply equipment which does not exactly correspond with what Kontrols has agreed to supply provided that any differences do not make the equipment unsuitable for the customer's declared purpose.

14 OWNERSHIP AND RISK

Unless otherwise arranged:

- a. Equipment remains the property of Kontrols until paid for in full and no other moneys are owing to Kontrols by the customer. The customer shall not sell or deliver equipment to a third party (except for sales or deliveries in the normal course of a business carried on by the customer) without Kontrols' prior consent. By the act of selling or delivering equipment to a third party (whether or not such sale or delivery is authorised) the customer assigns the proceeds with respect to equipment to Kontrols absolutely and not by way of security. While equipment remains the property of Kontrols, the customer shall keep it clearly identified as such and separate from other equipment. If payment for equipment is overdue in whole or in part Kontrols may (without prejudice to any of its other rights) recover or re-sell equipment or any of it and may enter upon the customer's premises by its servants or agents for that purpose. Notwithstanding Clause 5, payment for equipment shall become due immediately upon the customer's solvency is involved. If any proceeds of sale or otherwise in respect of equipment received by Kontrols exceed the amount by which the customer is indebted to Kontrols on any account; Kontrols shall be indebted to the customer in respect of the surplus but shall not be a trustee.
- b. The risk in the equipment shall pass to the customer on delivery, which, for these purposes, shall mean:
 - (I) The time when the truck carrying equipment arrives at the customer's site and before unloading; or
 - (II) (In the case of equipment collected by the customer or its agent from a Kontrols' dispatch point) the time when equipment has been loaded on the truck.

In the case of equipment delivered through an agent, the agent's signature shall be evidence of delivery to the customer.

15. CLAIMS FOR DAMAGE OR SHORTAGE

Kontrols shall not be liable for damage in transit or for shortages unless a claim in writing is received within 7 days of customer's receipt of equipment.

16. TIME

Time shall not be of the essence of the contract.

17. SUB-CONTRACTORS

Kontrols is at liberty to employ sub-contractors on all or any part of customer's order.

18. NON WAIVER OF BREACH

- a. No breach by customer of any of these terms and conditions shall be taken to have been waived or released by Kontrols unless such waiver is in writing signed by the General Manager.
- b. No waiver by Kontrols of any breach hereunder will be deemed a waiver of any continuing or recurring breach.

19. GOVERNING LAW

These terms and conditions, for orders accepted in Australia, shall be governed and interpreted in accordance with the laws of the state of Victoria.

20. DEFINITIONS

In these terms and conditions:

'Equipment' means equipment and other goods sold by Kontrols to customer and includes spare parts.

'General Manager' means the General Manager of Kontrols or his authorised representative.

'Kontrols' means Kontrols and Industrial Weighing Pty Ltd.

'overdraft rate' means for sales in New Zealand the current prime overdraft rate given by Westpac to most favoured customers, and for sales elsewhere, including Australia, means the like rate given by Commonwealth Bank of Australia.

21. EXPORT CONTROLS

Equipment supplied is intended for use only in the country of destination.