

WARRANTY TERMS

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1 DICTIONARY

In these Warranty Terms, the following terms have the following meanings:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Contract means a contract (whether or not in writing) between or involving the Purchaser and the Supplier for the supply of Products by the Supplier to the Purchaser, (including any quotation or invoice given by the Supplier to the Purchaser, or any Purchase Order to the extent it is accepted by the Supplier);

Products means any goods manufactured and/or supplied (or to be manufactured and/or supplied) by the Supplier to the Purchaser (including those products specified in any Contract);

Purchase Order means any purchase order, instruction, specification or requisition issued by the Purchaser to the Supplier relating to Products;

Purchaser means the person specified in or contemplated by a Contract as being the purchaser of the Products;

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth);

Supplier means the company specified in or contemplated by a Contract as being the supplier of the relevant Products, being KBX Components Pty Ltd ABN 82 162 633 543 or a Related Body Corporate of that company; and

Warranty Terms means these warranty terms.

2 APPLICATION OF THESE WARRANTY TERMS

Unless otherwise agreed in writing, these Warranty Terms apply to all Products provided or supplied, or to be provided or supplied, by the Supplier to the Purchaser, and are taken to be incorporated in and form part of each Contract.

3 WARRANTY

- 3.1. Subject to this clause 3, if a Product supplied to a Purchaser:
 - (a) contains a defect in materials or workmanship which is the fault of the Supplier, and which results in the Product being not fit purpose; or
 - (b) does not have the dimensions specified for that Product in the Contract relating to the supply of that Product,
 and in each case the Purchaser makes a claim in accordance this clause 3 in relation to the relevant defect which is accepted by the Supplier, then the Supplier must at its cost (and as the Purchaser's sole remedy, subject to clause 3.2) replace the Product with another Product.
- 3.2. The Products come with guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a *major failure* and compensation for any other reasonably foreseeable loss or damage. The Purchaser is also entitled to have the Products repaired or replaced if the Products fail to be of *acceptable quality* and the failure does not amount to a *major failure*. These benefits are in addition to any other rights and remedies available to the Purchaser at law in relation to the Products, subject to clause 4. This clause 3.2 only applies where the Purchaser is a *consumer* in connection with the supply of the Products. In this clause 3.2, terms that are in italics have the meaning given to them in the Australian Consumer Law.
- 3.3. Any guarantees provided by the Supplier in clauses 3.1 and 3.2 in relation to a Product only apply for a period of 12 months from the date of delivery or supply of that Product by the Supplier to the Purchaser (each a **Warranty Period**).

- 3.4. If the Purchaser considers that it is entitled to make a claim under this clause 3 or otherwise in relation to a Product (**Warranty Claim**), then the Purchaser must (at its cost):
 - (a) notify the Supplier by email or post (using the contact details set out above or as otherwise notified by the Supplier) before the end of the relevant Warranty Period;
 - (b) as part of that notification, provide the Supplier with:
 - (i) details of the alleged defect that relates to the Product;
 - (ii) the Purchaser's full name, address and telephone number;
 - (iii) a copy of the Contract relating to the Product; and
 - (iv) any other information required by the Supplier; and
 - (c) cause the allegedly defective Product to be returned to the Supplier for inspection at the address set out above or any other address notified by the Supplier.
- 3.5. If the Purchaser has complied with its obligations in clause 3.4 and the Supplier is satisfied that the Purchaser has the right to make a Warranty Claim and that the relevant Product is defective and not fit for purpose or does not have the dimensions specified in the relevant Contract, then the Supplier will (as the Purchaser's sole remedy) replace the Product as contemplated by clause 3.1.
- 3.6. To the maximum extent permitted by law, the warranties in this clause 3 (if applicable) do not cover defects in the Product or incorrect dimensions of the Product which the Supplier reasonably determines to have been caused by:
 - (a) improper use;
 - (b) improper installation;
 - (c) fire, water, lightning, frost or accidental damage;
 - (d) any alteration, repair or other technical manipulation (without the Supplier's consent) by the Purchaser or any other person not acting under the direction or control of the Supplier;
 - (e) any act or omission of the Purchaser or any other person not acting under the direction or control of the Supplier;
 - (f) the Product being used in conjunction with other parts or accessories not approved by the Supplier (acting reasonably); or
 - (g) normal wear and tear.
- 3.7. To the maximum extent permitted by law, the following additional terms and conditions will apply in respect of any Warranty Claim:
 - (a) To the extent that this clause 3 (or any applicable law) places a repair or replacement obligation on the Supplier, the relevant Products or any other consumables or other materials used in relation to that repair or replacement, may (where possible) instead be repaired with or replaced by second hand or refurbished products, consumables or other materials (as the case may be) of the same or similar type.
 - (b) Without limiting the other provisions contained in these Warranty Terms, the Supplier will not be liable under any Warranty Claim relating to any Products if:
 - (i) any moneys are owing by the Purchaser to the Supplier in relation to any of the Products; or
 - (ii) the Purchaser is in breach of any terms of the relevant Contract.

- 3.8. Any Products supplied to a Purchaser by the Supplier acting as agent, re-seller or re-supplier of the manufacturer of the relevant Product, may come with limited warranties from the manufacturers of those Products and, to the maximum extent permitted by law, those warranties are the only warranties given to the Purchaser in respect of those Products (it being acknowledged and agreed that those warranties are given by the manufacturer, not the Supplier). The Supplier (in its capacity as agent, re-seller or re-supplier) has no authority to make any representations or warranties in relation to any such Products, and it can only pass on information in relation to the Products which is published in materials or other data provided by the manufacturer of the Products and which is in the public domain.

4 LIABILITY

- 4.1. Subject to the provisions of this clause 4, and to the maximum extent permitted by law, the Supplier is not liable to the Purchaser or to any other person for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss or cost associated with removal and refit of component, loss of business opportunity, or loss or damage resulting from wasted management time, irrespective of whether the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise, or the Supplier or any other person was previously notified of the possibility of that loss or damage.
- 4.2. Any warranty, guarantee, condition, representation, undertaking or other right that would be implied in or otherwise required in connection with the relevant Contract by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.
- 4.3. Notwithstanding the other provisions in this clause 4 and anything else in these Warranty Terms, the Supplier does not exclude, restrict or modify any warranty, guarantee, condition, representation, undertaking or other right under any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute or cause any part of these Warranty Terms to be void.
- 4.4. Subject to this clause 4, the maximum aggregate liability of the Supplier for all proven losses, damages and claims arising out of any Contract, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Purchaser to the Supplier under the relevant Contract to which the relevant breach, negligence, tort or common law or statutory action relates.

5 GENERAL

- 5.1. If any provision of these Warranty Terms or any Contract is or becomes invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected.
- 5.2. These Warranty Terms are governed by and must be construed in accordance with the laws in force in Victoria. The Purchaser submits to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to these Warranty Terms.