

**kane-website-terms-and-conditions KANE INTERNATIONAL LIMITED  
STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND  
SERVICES**

[A larger font copy of these Terms is available upon request.]

**1. Definitions**

**1.1** In the Contract the following definitions will have the following meanings:

|                          |  |
|--------------------------|--|
| <b>COF</b>               | a Confirmation of Order Form issued by Kane confirming the Customer's order for Goods and/or Services or where purchased on-line such Goods or Services described at the point of purchase such as the Kane servicing and recertification service for analysers;                   |
| <b>Contract</b>          | these Terms and a COF;   |
| <b>Customer</b>          | the customer named as such in a COF;   |
| <b>Customer Material</b> | any material provided by the Customer to Kane for use in connection with the supply of Goods or Services including, without limitation, drawings, designs, photographs, images and plans, and other documents or information in any media;   |
| <b>Goods</b>             | the goods specified as such in a COF;  |
| <b>IP Rights</b>         | any copyright, patent, registered design, design rights, utility models, trade marks, trade secrets, know how, database rights, confidential information or any other registered or unregistered intellectual property rights of whatever nature subsisting anywhere in the world; |
| <b>Kane</b>              | Kane International Limited (company registration number 01555423) whose registered office address is Kane House, 11 Bessemer Rd, Welwyn Garden City AL7 1GF;   |
| <b>Price</b>             | the price for the Goods or Services specified in a COF;  |
| <b>Services</b>          | the services specified as such in a COF; and   |
| <b>Terms</b>             | the terms set out in this document.  |

**1.2** In the Contract:

**1.2.1** the singular includes the plural and vice versa;

- 1.2.2 references to gender include references to all genders;
- 1.2.3 references to clauses are to clauses of these Terms;
- 1.2.4 the clause headings are for reference only and will not affect the construction or interpretation of these Terms; and
- 1.2.5 references to statutes, any statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

1.3 In the event of conflict between the Terms and a COF , the Terms will prevail over a COF.

## 2. Application of Terms

- 2.1 All Contracts are made subject to these Terms to the exclusion of any other provisions other than terms expressly mentioned herein (including any that the Customer purports to apply under any purchase order or other document) . Each COF signed by a Customer will be a binding order for Goods and/or Services subject to these Terms. Kane reserves the right to amend these Terms at any time. Kane only accepts **business buyers** for its Goods or Services from its website. If Customer is dealing as a consumer Customer must notify Kane in advance and consumer terms and conditions will be provided, if the Customer's order is accepted.
- 2.2 No order submitted by a Customer shall be deemed accepted unless and until Kane confirms its acceptance in a COF (or where the purchase is on-line Kane accepts the Customer's on line) or (if earlier) Kane delivers the Goods and/or Services to the Customer. Kane reserves the right to refuse any order.
- 2.3 Customers using Kane's servicing and recertifying service for Kane analyser products are also subject to the description of and requirements for that service available on Kane's website at <https://www.kane.co.uk/service-and-re-certification> and the description of that service on links thereon including Kane requirements for Customers returning an analyser from both the UK and abroad.
- 2.4 Customers using Kane's website must also comply with its terms and conditions for use of the website at [ **add a link to the new version of these terms for use and supply from the website**]. In the event of any conflict between those terms and these those terms on the website shall prevail.

## 3. Sale and Supply of Goods and Services

- 3.1 Kane sells the Goods and/or Services to the Customer. Kane will endeavour to supply the Customer with the quantity and description of Goods and/or Services specified in a COF.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by Kane and any descriptions or illustrations contained in any information

disseminated by Kane in any media is issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract and Goods and/or Services are not sold by sample.

**3.3** Kane may from time to time make changes in the specification of the Goods and/or Services which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods and/or Services.

**3.4** Kane endeavours to adhere to its health and safety policy and environmental standards (copies at <https://www.kane.co.uk/about-kane>) but is not liable if it fails to do so.

#### **4. Delivery**

**4.1** Unless otherwise agreed in writing, Goods will be sold Ex-Works (as defined by the Incoterms 2010 (ICC Publication No. 715E)) and delivery of the Goods shall take place at Kane's place of business. Where Services are supplied through the Kane website the terms for use and supply from the website shall also apply available [[HERE](#)].

**4.2** Any dates specified by Kane for delivery of the Goods and/or Services are intended to be an estimate and time for delivery shall not be of the essence. If no dates are specified by Kane, delivery shall be within a reasonable time.

**4.3** The Customer will take delivery of the Goods within 7 days of Kane giving the Customer notice that the Goods are ready for delivery.

**4.4** If for any reason the Customer fails to take delivery of any of the Goods within the period specified in clause 4.3, or Kane is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

**4.4.1** risk in the Goods will pass to the Customer (including for loss or damage caused by Kane's negligence);

**4.4.2** the Goods will be deemed to have been delivered; and

**4.4.3** Kane may store the Goods until delivery, whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

**4.5** Kane may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the Customer to repudiate or cancel any other contract or instalment.

**4.6** Kane will not be liable for non-delivery of the Goods unless the Customer gives Kane written notice within 7 days of taking delivery of the Goods. Any liability of Kane for non-delivery of the Goods will be limited to replacing the Goods within a reasonable time or issuing a credit note at a pro rata rate against any invoice raised for such Goods.

## **5. Risk and Title**

**5.1** The Goods are at the risk of the Customer from the time of delivery.

**5.2** Ownership of the Goods will not pass to the Customer until Kane has received in full (in cash or cleared funds) all sums due to it in respect of the Goods

**5.3** Until ownership of the Goods has passed to the Customer, the Customer will:

**5.3.1** hold the Goods on a fiduciary basis as Kane's bailee;

**5.3.2** store the Goods (at no cost to Kane) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Kane's property;

**5.3.3** not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

**5.3.4** maintain the Goods in satisfactory condition and keep them insured on Kane's behalf for their full price against all risks to the reasonable satisfaction of Kane. On Kane's request, the Customer will produce the policy of insurance to Kane.

**5.4** Until ownership of the Goods passes to the Customer, the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to Kane for the proceeds of any sales of the Goods.

**5.5** The Customer grants Kane, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect and/ or recover them.

## **6. Quality of Goods and Services**

**6.1** Kane will be under no liability in respect of any defect in the Goods or Services arising from any drawing, design or specifications supplied by the Customer or any negligence of the Customer.

- 6.2** Kane warrants that (subject to the other provisions of this clause 6) upon delivery and for a period of 12 months from the date of delivery the Goods will be free from defects arising from faulty materials or workmanship and that Services will be provided with due skill and care and as described on its website or in any specification for the Services or Goods.
- 6.3** Kane will not be liable for a breach of the warranties in clause 6.2 unless Kane is given a reasonable opportunity of examining such Goods /and or Services and in the case of Goods the Customer (if requested by Kane) returns such Goods to Kane's place of business at the Customer's cost for the examination to take place there.
- 6.4** Kane will not be liable for a breach of the warranties in clause 6.2 if:
- 6.4.1** the defect arises because the Customer failed to follow Kane's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Services or (if there are none) good trade practice, and/or
  - 6.4.2** the Goods have not been subject to normal wear and tear; and/or
  - 6.4.3** the Customer alters or repairs such Goods without the written consent of Kane or uses Services in a manner for which they were not designed by Kane.
- 6.5** Subject to clauses 6.3 and 6.4, if any of the Goods and/ or Services do not conform with the warranties in clause 6.2, Kane will at its option repair or replace such Goods (or the defective part) or in the case of Goods or Services refund the price of such Goods or Services at a pro rata rate provided that, if Kane so requests, the Customer will, at the Customer's expense, return the Goods or the part of such Goods which is defective to Kane.
- 6.6** If Kane complies with clause 6.5 Kane will have no further liability for a breach of the warranties in clause 6.2 in respect of such Goods or Services.
- 6.7** For Customers buying a Kane Analyser service, Kane makes reasonable endeavours to remind the Customer to return the Kane Analyser in time for annual service, recertification and repair if it is correctly registered on Kane's web site and the Customer contact details kept up-to-date. However, Kane does not accept any responsibility nor have any liability if it fails to remind the Customers to return the Kane Analyser for annual service, recertification and repair or if the Customer fails to receive Kane's reminders.
- 6.8** Kane accepts no responsibility nor liability, and hereby excludes the same, to check who owns any Kane Analyser or any product the Customer supplies to Kane returned for service, recertification and repair.
- 6.9** UKAS calibrations are only available for gas, temperature, and pressure measurements within our scope of accreditation. Refer to [UKAS](#) for the current scope.

## **7. Customer Obligations**

**7.1** The Customer will (in each case insofar as is reasonably necessary to enable Kane effectively to carry out its obligations under the Contract):

**7.1.1** ensure that its agents, sub-contractors and employees co-operate reasonably with Kane and its agents, sub-contractors and employees supplying the Goods;

**7.1.2** promptly furnish Kane with such information, data and documents as it may reasonably request for the proper supply of the Goods;

**7.1.3** ensure that any IP Rights which Kane is required to use or modify in order to supply the Goods are either proprietary to the Customer or properly licensed to the Customer and that Kane is properly authorised to use such IP Rights. The Customer will indemnify and hold harmless Kane in respect of any costs, expenses, damages, third party actions or claims arising out of any actual or alleged infringement of third party IP Rights by Kane or Customer; and

**7.1.4** promptly undertake its obligations under the Contract.

**7.2** If Kane's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, Kane will not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

**7.3** The Customer hereby agrees to indemnify Kane on demand against any loss, damage, cost and expense suffered or incurred by Kane directly or indirectly as a result of the Customer's (and its employees', agents', sub-contractors') negligence, willful misconduct, failure to perform or delay in the performance of any of the Customer's obligations under the Contract.

## **8. Price and Payment**

**8.1** Payment is due 30 days from the end of month of invoice unless otherwise specified on the COF.

**8.2** Unless otherwise agreed in writing, the Price is strictly nett of VAT and other taxes, levies and delivery charges.

**8.3** Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Kane any sum due on the due date, Kane may charge interest on such sum from the due date for payment at the annual rate payable under the Late Payment of Commercial Debts (Interest) Act 1998 from time to time, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and statutory late payment charges.

**8.4** Notwithstanding clause 8.3, if the Customer fails to pay any sum by the due date, Kane may at its option, and without prejudice to any other remedy at any time after payment has become due, terminate or suspend performance of the Contract.

**8.5** The Customer will make all payments due to Kane in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Kane to the Customer.

## **9. Liability**

**9.1** Save as expressly specified in the Contract, all terms, conditions, warranties, representations, or guarantees whether express or implied relating to the performance, quality or fitness for purpose of any part of the goods and/ or services provided by Kane under the Contract are, to the fullest extent permitted by law, hereby excluded.

**9.2** In no event will Kane be liable to the Customer for any of the following however and whenever arising: loss of profits; or loss of business; or loss of revenue; or loss of data; or loss of goodwill; or loss of anticipated savings; or any special, indirect, consequential or pure economic loss, damage, costs or expense, subject always to clause 9.5 below..

**9.3** Subject always to clause 9.5 below, Kane's total liability to the Customer shall be limited to the sum paid or due to be paid by the Customer to Kane on the order in relation to which a claim arises.

**9.4** Each party agrees that the limitations of liability contained in this clause 9 have been negotiated and agreed between the parties in the context of the other provisions of the Contract and satisfy the requirement of reasonableness within the meaning of sub-section 2(2) and Section 11 of the Unfair Contract Terms Act 1977. The Customer warrants that it does not deal as a consumer and that it purchases in the courts of its business.

**9.5** Notwithstanding any other provision of this Agreement no provision of this Agreement shall exclude or limit either party's liability to the other for death or personal injury caused by its negligence nor for fraud.

## **10. Termination**

**10.1** Either party may forthwith terminate the Contract by written notice to the other if the other party:

**10.1.1** is in material breach of a provision of the Contract and fails to remedy such breach (if capable of remedy) within 30 days of having received written notice of breach; or

**10.1.2** (being an individual) has a statutory demand or bankruptcy order being made against him or makes an arrangement or composition with creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) enters into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or analogous proceedings or procedure, or is otherwise insolvent or ceases or threatens

to cease to trade.

- 10.2** In the event that the Contract is terminated in accordance with the early termination rights provided herein, all outstanding sums will become immediately payable by the Customer.
- 10.3** Termination or suspension of the Contract will be without prejudice to any accrued rights or obligations of either party.

## **11. Force Majeure**

- 11.1** Neither party will be liable for any failure or delay in the performance of the Contract which is caused by circumstances beyond the reasonable control of the party including without limitation acts of God, war or national emergency, acts of terrorism, fire, explosion, flood, strike and lock-out (“Force Majeure”), provided always that the defaulting party uses all reasonable endeavours (but without an obligation to incur cost) to minimise the period of disruption caused by the Force Majeure.
- 11.2** If either party is prevented from performance of its obligations by reason of Force Majeure for a continuous period in excess of 3 months, the other party may terminate the Contract forthwith on service of written notice upon the party so prevented, in which case neither party will have any liability to the other except that rights and liabilities which accrued prior to such termination will continue to subsist.

## **12. Intellectual Property**

- 12.1** The Customer acknowledges that any and all of the IP Rights subsisting in or used in connection with the Goods or Services will be and will remain the sole property of Kane or such other party as may be identified therein or thereon and the Customer will not at any time dispute such ownership.
- 12.2** The Customer acknowledges that any IP Rights generated by or on behalf of Kane in the performance of its obligations under the Contract will belong to Kane and the Customer will not at any time dispute such ownership. The Customer shall enter into any documents necessary to vest such rights in Kane.
- 12.3** The Customer hereby agrees to indemnify Kane forthwith upon demand in respect of any loss, damage, cost and/or expense suffered or incurred by Kane directly or indirectly as a result of a third party claiming that Kane's use of Customer Material infringes the rights of such third party.

## **13. Data Protection**

**13.1** Kane will process personal data (“Personal Data”) provided by the Customer as defined in the Data Protection Act 1998 and any replacement legislation thereof in force from time to time (“DPA”) in accordance with applicable data protection law and this clause 13. Kane’s registration number with the UK Information Commissioner is Z1285981. Where Goods and/or Services are purchased over the Kane website Kane’s Privacy Policy <https://www.kane.co.uk/about-kane/privacy-policy> also applies in addition to this clause. Customer consents to Kane using Personal Data as follows:

**13.1.1** Kane will obtain, record, store and use Personal Data as necessary to supply the Goods including transfer of Personal Data to employees, agents and third parties as required for this purpose;

**13.1.2** Kane may transfer its business assets (which include Personal Data) on re-organisation, sale or merger of the whole or any part of its business;

**13.1.3** Kane reserves the right to process Personal Data as required for marketing purposes, to obtain legal advice, comply with legal requirements, enforce or apply any agreements (including the Contract) and protect the rights, property or safety of Kane, its employees, clients, customers and others; and

**13.1.4** Kane may transfer Personal Data outside the European Economic Area for any of the purposes listed in this clause 13.1.

## **14. Confidentiality**

**14.1** The parties will keep confidential (and ensure that their employees and agents keep confidential) all information received by them relating to any part of the business and affairs of the other party and the terms of the Contract (which includes, without limitation, Price and payment terms) provided that these obligations do not apply to information which is:

**14.1.1** or becomes publicly known through no wrongful act of the party concerned;

**14.1.2** required to be disclosed by an order of law or other binding authority; or

**14.1.3** disclosed to any adviser of either party bound by a professional duty of confidentiality.

**14.2** The provisions of this clause 14 are in addition to any non-disclosure agreement between the parties which may also apply.

**14.3** The provisions of this clause shall continue notwithstanding any termination of this agreement.

## **15. Waste Electrical and Electronic Equipment**

- 15.1** Save for “WEEE from private households” (as defined in the Waste Electrical and Electronic Equipment Regulations 2013 (“WEEE Regulations”)), the Customer will at its own cost be responsible for the collection, treatment, recovery, and environmentally sound disposal of the Goods in accordance with the WEEE Regulations and any other statute, regulation or other legal requirement issued or made in connection with the WEEE Regulations as modified from time to time.

## **16. General**

- 16.1** The Contract and any terms referred to expressly herein in particular those on the Kane website contain the whole agreement between the parties in respect of its subject matter and supersedes any prior written or oral agreement between them relating to it other than any non disclosure agreement between the parties and the parties confirm that they have not entered into the Contract on the basis of any representations that are not expressly incorporated into the Contract. Nothing in the Contract will, however, operate to limit or exclude any liability for fraud.
- 16.2** No amendment to the Contract will be binding unless made in writing and signed by an authorised signatory of each party save in the case of on-line terms on the Kane website which may be varied by Kane from time to time by placing the revised terms on its website. In the case of Kane, the authorised signatory must be a Director of Kane.
- 16.3** The Customer will not assign, charge or otherwise transfer to a third party any of its rights or obligations hereunder without the prior written consent of Kane. Kane may assign, transfer or sub-contract any of its rights or obligations hereunder without the prior written consent of the Customer.
- 16.4** No waiver of any breach of any of the parties’ obligations hereunder will represent a waiver of the waiving party’s rights hereunder or of any subsequent breach.
- 16.5** The parties respectively will and will procure that any other necessary party will execute all such documents and do all acts and things as may reasonably be required on or subsequent to completion of the Contract for securing each of the obligations of the parties under the Contract.
- 16.6** None of the provisions of the Contract are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to the Contract.
- 16.7** Any notice to effect suspension or termination of the whole or any part of the Contract:
- 16.7.1** will be made in writing and either delivered personally or sent by recorded delivery to the party to whom the notice is addressed at its address as set out in the Contract or such other address as a party may specify by notice in writing to the other parties;

**16.7.2** in the absence of evidence of earlier receipt will be deemed to have been duly given:

- (i) if delivered personally, when left at the address referred to in clause 16.7.1; or
- (ii) if sent by recorded delivery, at the time recorded by the delivery agent.

**16.8** For the avoidance of doubt electronic mail will be deemed to be “writing” for the purpose of the Contract but this will not prejudice the express requirements for delivery of notices under clause 16.7.

**16.9** If any provision of the Contract is held to be void or unenforceable in whole or in part, the Contract will continue to be valid as to the other provisions thereof and the remainder of the affected provision.

**16.10** The Contract will be binding on and will continue for the benefit of the permitted successors and assigns of each of the parties.

**16.11** All provisions of the Contract will so far as they are capable of being performed and observed continue in full force and effect notwithstanding any expiry or earlier termination.

## **17. Applicable Law**

The Contract will be governed by and construed in accordance with the laws of England and Wales and each party to the Contract submits to the exclusive jurisdiction of the English courts for the resolution of any Contract dispute.

Kane Standard Terms March 2016