

# KLEN INTERNATIONAL (74) Pty Ltd - Purchase Order Terms and Conditions

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**NOTE: IF SUPPLIER HAS AN UNEXPIRED SUPPLY AGREEMENT WITH KLEN, THE TERMS AND CONDITIONS SET FORTH HEREIN DO NOT APPLY. PLEASE SEE SECTIONS 2 AND 4 FOR ADDITIONAL DETAILS.**

- 1. Definitions.** The term "KLEN" shall refer to Klen International (74) Pty Ltd. (ACN 008 776 681) and its affiliates. The term "Supplier" shall refer to the vendor designated on the face of the purchase order issued by KLEN and shall also include Supplier's employees, subcontractors, independent contractors and all other persons performing any type of work under the purchase order. The term "Product" or "Products" shall refer to the materials, supplies and items and equipment covered by the related purchase order and any pre-existing product supply agreement between the Supplier and KLEN. The term "Agreement" shall refer to an accepted purchase order which will then be subject to the terms and conditions as set forth herein. Other defined terms have the meanings given to them herein.
- 2. Acceptance of Purchase Order.** KLEN is currently or has previously communicated to Supplier a purchase order to purchase a quantity of products at a defined price and may have also included particular shipping instructions or other specifications required by KLEN. Except as provided in Section 4. Entire Agreement, all purchase orders are subject to and expressly conditioned upon the terms and conditions contained herein and upon Supplier's assent thereto. The specific purchase order and all of the terms and conditions contained herein will be controlling, and any additional and/or inconsistent terms and conditions set forth in any acknowledgment or acceptance documents requested from and/or provided by Supplier are expressly objected to and rejected. No variation of these terms and conditions will be binding upon KLEN unless agreed to in writing and signed by an officer or other authorized representative of KLEN. Any conduct by Supplier which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute an acceptance by Supplier of the purchase order and these terms and conditions. If a purchase order has been issued by KLEN in response to an offer or quotation by Supplier, and these terms and conditions are additional to or different from any terms of such offer, then the issuance of the purchase order shall constitute an acceptance of such offer subject to the express condition that Supplier assent to these additional and different terms and conditions, and Supplier shall have been deemed to have so assented unless Supplier notifies KLEN to the contrary in writing within ten (10) days of receipt of the purchase order.
- 3. Changes.** KLEN reserves the right at any time to change a purchase order in writing, and if such change causes an increase or decrease in price or delivery of Products, an equitable written adjustment shall be made upon mutual written agreement.
- 4. Entire Agreement.** Each purchase order issued by KLEN, including these terms and conditions which are incorporated into each purchase order by reference, as well as any specifications, drawings, exhibits or amendments that may be referred to or attached to that purchase order, sets forth the complete and final agreement between the parties with respect to the subject matter thereof, and supersede any and all prior or contemporaneous oral or written communications relating thereto.  
**NOTE: If a purchase order is used as a release for goods or services under a pre-existing and non-expired supply agreement between the Parties, then the terms and conditions of that agreement shall apply and take precedence over these terms and conditions.**
- 5. Grant of Distributorship.** For Products purchased under this Agreement that KLEN intends to distribute to customers, Supplier hereby grants to KLEN, and KLEN hereby accepts, the non-exclusive right to promote, market, sell and distribute such Products throughout the world (the "Territory"). KLEN shall not be prohibited from promoting, marketing, selling and distributing other articles, including ones that compete with such Products, whether in the Territory or otherwise. KLEN shall have the right to appoint sub-distributors to promote, market, sell and distribute such Products in the Territory.

6. **Price.** Supplier agrees to sell the Products to KLEN at the price(s) set forth on the Order. Supplier shall be responsible for all domestic, foreign, state or local sales, use or other taxes (excluding KLEN's income and franchise taxes and any Australian Goods and Services (GST) tax).
7. **Invoices and Payment.** Supplier shall invoice KLEN in U.S. dollars for Products imported into Australia and in Australian dollars for domestic purchases. Each invoice shall include: purchase order numbers, Product numbers, descriptions of Products, quantities, unit price and complete billing address for the Products so delivered. KLEN's purchase order shall specify the billing address. Unless otherwise agreed upon by the parties in writing, KLEN shall pay all undisputed invoiced amounts within sixty (60) days of the receipt of the Products by KLEN's warehouse receiving system, provided that KLEN shall be given a two percent (2%) discount on any invoiced amounts paid within fifteen (15) days of receipt or a one percent (1%) discount on any invoiced amount paid within thirty (30) days of receipt.
8. **Shipment and Title.** All Products shipped by Supplier from Supplier's location(s) to KLEN's locations shall be shipped FOB (Incoterms 2010), freight collect, via KLEN's specified carriers at KLEN's discretion. Title and risk of loss of all Products will pass to KLEN upon Supplier's delivery of such Products to KLEN. Proof of delivery will be required upon KLEN's request. Any deviation from the delivery terms of this Section 7 must be agreed upon in writing by authorized representatives of both Supplier and KLEN, prior to shipment.
9. **Packaging of Products.** Supplier shall pack, package, mark and otherwise prepare all Products for shipment in accordance with the standards of the International Safe Transit Association and good commercial practice, acceptable to common carriers for shipment, and adequate to insure their safe arrival at the ultimate destination. In addition, all Products shall be shipped in heat-treated pallets, and pallets shall be marked accordingly and all labels on individual units shall contain hazardous information. Supplier shall mark all containers with necessary lifting, handling and shipping information, purchase order number, date of shipment and the names of Supplier and KLEN.
10. **Inspection and Acceptance.** KLEN shall have a reasonable opportunity to inspect the Products after receipt at the destination. Any inspection by KLEN does not relieve Supplier of any obligations or liabilities under this Agreement. If any Products do not meet all of the requirements of this Agreement, KLEN shall have the right to reject such Products at Supplier's expense. Payment for any Products shall not be deemed an acceptance thereof.
11. **Regulatory.** For each Product sold to KLEN, Supplier shall provide to KLEN: (i) a current and accurate Country of Origin and Harmonized Tariff Schedule; (ii) material safety data sheets and/or safety data sheets and any other documentation reasonably necessary to enable KLEN to comply with all then prevailing applicable federal, state, municipal, provincial, local, and other laws and regulations ("Laws") relating to the Products; (iii) confirmation in writing whether Supplier participates in a free trade agreement and (iv) certificates of analysis, certificates of conformity, certificates of quality, certificates of sterility and certificates regarding animal origin or allergens, as applicable. Supplier must notify KLEN of any change to the country of origin in writing, immediately upon knowledge of such change. For chemicals, and other regulated Products, Supplier must maintain retention samples of all Products for each individual lot number, until the expiration of the individual lot or as specified by any regulatory agency with regulatory jurisdiction over the Product.
12. **Ownership of Proprietary Rights. (i) Ownership.** Supplier recognizes that KLEN or its affiliate is the owner of certain brand names, trademarks, trade names, logos and other intellectual property connoting KLEN which are proprietary to KLEN or its affiliate and which KLEN or its affiliate may elect to use in the promotion, marketing and sale of any of its products, and that Supplier has no right or interest in or to any of such intellectual property. Except as otherwise contemplated by this Agreement, neither Supplier nor KLEN, shall, without the prior written consent of the other party, use any of such other party's (or its affiliates') brand names, trademarks, trade names or logos, or adopt, use or register any words, phrases or symbols so nearly resembling any of such other party's (or its affiliates') brand names, trademarks, trade names or logos as to be likely to lead to confusion or uncertainty, or to impair or infringe the same in any manner, or otherwise imply any endorsement by one party of the other party or its products or services. **(ii) License.** Supplier hereby grants to KLEN (and its affiliates) a royalty-free, worldwide, irrevocable and paid-up right and license to use Supplier's manuals, logos, copyrighted information, brand names, trademarks and trade names on, and in the promotion, marketing, sale and distribution of, the Products that

Klen intends to distribute to its customers, it being expressly understood that KLEN and its affiliates shall discontinue, in a commercially reasonable time, the use thereof upon depletion of KLEN's and its affiliates' inventory of the Products. Supplier shall use reasonable efforts to register such brand names, trademarks, trade names and logos where reasonably necessary or useful to the successful distribution of the Products.

13. **Warranty.** Supplier hereby represents and warrants that all Products comprising each shipment or other delivery hereinafter made by Supplier to or on the order of KLEN or any of its customers, shall: (i) as of the date of such shipment and for the periods of time specified by Supplier or twelve (12) months, whichever is longer, be free from defects in design, operation, workmanship and materials, conform in all respects with all samples furnished and all labeling and product insert sheets and other product specifications and claims made by Supplier for them; (ii) conform to and perform in accordance with the specifications and drawings, if any, provided by KLEN or otherwise referred to, or incorporated into, this Purchase Order; (iii) be produced consistently with good manufacturing practices and good quality control practices; (iv) be merchantable and fit for their intended purposes; (v) be transferred with good and marketable title, free and clear of any liens or encumbrances; (vi) have at least 12 months of shelf-life remaining following the date of delivery; (vii) not infringe upon any patent, trade name, trade dress, trademark, service mark, copyright, or other proprietary rights of third parties; (viii) have been manufactured, packaged, and labeled and priced and shall be sold in compliance with all applicable Laws, (ix) not be adulterated or misbranded within the meaning of any applicable Law; (x) and comply with all applicable import and export Laws. Supplier authorizes KLEN to pass through all warranties to KLEN's customers to the extent such warranties relate to Products being distributed to customers by KLEN hereunder. Supplier further warrants that it shall comply (or cause compliance) with all applicable Laws and that it is authorized to enter into this Agreement and that in so doing it is not in violation of any Laws or any terms or conditions of any contract or other agreement to which it may be a party.
14. **Breach of Warranty.** Supplier shall promptly replace, at no cost to KLEN, any Product that is defective or non-conforming, with a non-defective or conforming Product (as applicable) or, at KLEN's option, credit KLEN's account for all amounts paid with respect to such Product. Supplier shall pay all taxes, transportation and other costs and expenses incurred by KLEN in the replacement of any defective or non-conforming Product.
15. **Recalls.** In cases of product recalls, Supplier shall immediately inform KLEN about the reason, the actions which have to be taken, and provide a standard letter for customers. This information must be sent to the email address [sups@klen.com.au](mailto:sups@klen.com.au) and by fax to +61 8 9306 8922. Time is of the essence. Supplier shall reimburse KLEN for any costs and expenses KLEN may have with respect to any recall.
16. **Insurance.** Supplier agrees to procure and maintain on an occurrence form basis product and/or general liability insurance with respect to the Products and contractual liability coverage relating to this agreement, with insurer(s) having Best's rating(s) of A- or better, naming KLEN (and its affiliates) as an additional insured (Broad Form Vendors Endorsement), with minimum limits in each case of \$10,000,000(AUD). Supplier shall promptly furnish to KLEN a certificate of insurance and renewal certificates of insurance evidencing the foregoing coverages and limits. Supplier's insurance shall be primary and non-contributing and shall not be canceled, reduced or otherwise changed without providing KLEN with at least thirty (30) days prior written notice. Supplier shall arrange a waiver of subrogation by the applicable insurance company under each policy.
17. **Indemnification.** Supplier agrees to and shall protect, defend, indemnify and hold harmless KLEN each of its affiliates and subdistributors, and its and their respective agents, directors, officers, employees and representatives, and its and their respective successors and assigns (each a "KLEN Indemnified Party") from any and all claims, actions, costs, expenses and damages, including attorney's fees and expenses ("Damages") arising out of any actual or alleged: (i) patent, trademark or copyright infringement in the design, composition, use by itself or in accordance with Supplier's instructions, sale, advertising or packaging of the Products; (ii) any breach of the representations or warranties herein; (iii) use or operation of the Products, including, without limitation, any Damages involving personal injury, death or property damage based on any theory, including strict liability theories, or warranty claim, defect or nonconformity as to any Product, and (iv) wrongful or negligent act or omission by Supplier or its officers, directors, stockholders, agents,

servants, employees, representatives or subcontractors except to the extent that such liability is caused by the negligent acts or omissions or willful misconduct of a KLEN Indemnified Party.

18. **Confidentiality.** During the performance of this Agreement, each party may have or may be provided access to the other party's confidential information and materials (including, without limitation, technical information, specifications, drawings, marketing, sales, the terms and conditions of this Agreement and new product development information). All such information which, if in written or other tangible form, is clearly designated as "confidential" or, if disclosed orally, is designated as "confidential" in a written memorandum delivered by the party disclosing the confidential information (the "Disclosing Party") to the party receiving the confidential information (the "Receiving Party") promptly following such oral disclosure or is by its nature of the type that is understood to be confidential, shall be retained in confidence in accordance with the terms of this Agreement and any applicable separate nondisclosure agreement between Supplier and KLEN. Further, the Receiving Party shall not (except as expressly authorized herein during the term of this Agreement) use, publish or disclose or cause or permit anyone else to use, publish or disclose any such information unless (i) such information was known to the Receiving Party at the time of receipt thereof from the Disclosing Party as evidenced by written documentation, (ii) such information becomes publicly available through no fault of the Receiving Party, or (iii) such information was lawfully obtained by the Receiving Party from any third party without violation of this Agreement. Nothing in this Section shall prevent a Receiving Party from disclosing confidential information of the Disclosing Party pursuant to a request of any court, government or governmental agency or as required by applicable Law; provided, however, that the Receiving Party shall give the Disclosing Party prompt notice of the required disclosure, and shall provide the Disclosing Party with reasonable assistance to the extent the Disclosing Party seeks a protective order or other means to preserve the confidentiality of the information required to be disclosed. All originals, copies, summaries and derivations of Confidential Information in whatever form shall be returned to the Disclosing Party upon the Disclosing Party's request.
19. **Export.** KLEN acknowledges that Products purchased from Supplier, upon resale, may be subject to Australian export laws and regulations as well as similar laws and regulations of the country of export. Subject to compliance with local, national law of the country of export, KLEN will not resell those products contrary to applicable law and regulations.
20. **Anti-Corruption.** Supplier represents and warrants that (i) it shall comply with all applicable anti-bribery and anti-corruption laws or regulations of any country or jurisdiction which is applicable to the parties business activities hereunder, including the U.S. Foreign Corrupt Practices Act of 1977, as amended; and (ii) Supplier has not and shall not offer, pay, give, or promise to pay or give, directly or indirectly (including through a third party or intermediary) any payment or gift of any money or thing of value to any government official, government employee (or employee of any company owned in part by a government), political party, political party official, or candidate for any government or political office (each, a "Government Official") to influence any acts or decisions of such Government Official or to induce such official to use his or her influence with the local government to effect or influence the decision of such government in order to assist either KLEN or Supplier in its performance of their obligations under this Agreement or to benefit the other party. Failure by Supplier to comply with this section shall be deemed a material breach of a material provision of this Agreement and KLEN will have the right to immediately terminate this Agreement and its performance without any liability to Supplier.
21. **Termination.** KLEN may terminate this Agreement, in whole or part, without cause, upon written notice to Supplier. Upon any such termination Supplier shall, to the extent specified by KLEN, stop all work associated with that specific Agreement, and cause its suppliers and subcontractors (if applicable) to stop work. KLEN may also terminate an Agreement, in whole or in part, if Supplier: (i) fails to make delivery of the Products within the time specified herein; (ii) fails to replace or correct defective Products in accordance with the provisions of this Agreement or perform in accordance with its obligations hereunder; (iii) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment of the benefit of creditors; or (iv) is affected by a force majeure event which continues for more than (six) 6 consecutive months.
22. **Survival.** Any sections of this Agreement that by their nature are intended to survive any termination or expiration of this Agreement (including, without limitation, sections pertaining to

warranty, indemnification and confidentiality), shall survive any termination or expiration of this Agreement.

23. **Force Majeure.** If either party is prevented from performing its obligations under this Agreement solely by circumstances beyond the reasonable control and without the fault or negligence of the party obligated to perform (including, without limitation, strikes or other labor difficulties (except those involving either party), war, shortages of power or raw material, Laws or acts of God), upon the prompt giving of notice to the other party detailing such force majeure event and its anticipated duration, the obligations of the party so prevented shall be excused during such period of delay, and such party shall take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as possible. The party invoking a force majeure event shall notify the other party promptly upon the termination of such event. During the period that the performance by one of the parties of its obligations under this Agreement has been suspended by reason of a force majeure event, the other party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.
24. **Waiver.** No waiver of the terms of this Agreement shall be binding on either party unless reduced to writing and signed by an authorized officer of the party to be bound and shall be effective only in the specific instance, and for the specific purpose for which given, and shall not be construed as a waiver of any rights in the future or subsequent breach. The failure of either party to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed as a waiver of such provisions or of the right of such party thereafter to enforce each and every such provision.
25. **Construction and Interpretation.** The captions in this Agreement have been inserted for convenience or reference only and do not constitute a part of, and shall not be considered in construing, this Agreement. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the remainder of this Agreement shall not be deemed invalid but shall remain in full force and effect. No course of dealing, usage of trade or course of performance shall supplement, explain or amend any term, condition or instruction of this Agreement, or any shipment of Products hereunder.
26. **Applicable Law.** All orders, sales and these terms and conditions shall be governed by the laws of Western Australia, excluding conflict of law rules. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State.
27. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and designees. Neither party may transfer, assign or delegate its rights or obligations under this Agreement or any portion thereof without the prior written consent of the other party, except for any transfer, assignment or delegation, in whole or in part, to its respective parent, subsidiaries or other affiliates, or to a successor entity.
28. **Nature of Relationship.** Neither party, its agents or employees shall, under any circumstances, be considered to be an agent, partner, joint venturer or representative of the other party, or anything other than an independent contractor for all purposes of this Agreement, and except as may be authorized specifically in writing, neither party has express or implied authority to bind the other in any manner whatsoever by virtue of this Agreement.
29. **Notices.** All notices required by this Agreement shall be in writing, and if sent to KLEN, shall be delivered to the address set forth on the purchase order with a copy to:
- KLEN International (74) Pty Ltd  
36 Hemisphere Street  
Neerabup, Western Australia 6031  
Attention Managing Director
30. **Conflict Minerals.** Supplier acknowledges that KLEN and/or its customers are/or may be required to comply with the disclosure and reporting obligations of the Securities and Exchange Commission related to the use of "Conflict Minerals" (tin, tantalum, tungsten and gold) as prescribed by the United States Dodd Frank Wall Street Reform and Consumer Protection Act. In furtherance of this, Supplier hereby represents, warrants, covenants and certifies that no Product contains or will contain any Conflict Minerals and that it shall exercise due diligence on the source and chain of

custody of its suppliers to avoid the use of Conflict Minerals in the Products. Supplier further agrees that it (i) shall provide any requested certifications to KLEN and/or its customers regarding its compliance with the foregoing; (ii) shall require its suppliers of every tier to provide the same certifications regarding the materials it supplies; (iii) and shall provide any other reasonable assistance in relation to the foregoing requirements. Supplier shall indemnify, defend and hold harmless any KLEN Indemnified Party from and against any and all Damages arising from, or relating to, Supplier's failure to comply with the terms of this section.

31. **Chain of Responsibility Law.** KLEN and Supplier acknowledge and agree that each of KLEN and Supplier has obligations under the Chain of Responsibility Law. Each party shall comply with its obligations under the Chain of Responsibility Law. Without limiting the foregoing, neither KLEN nor Supplier shall contribute to or encourage breaches of the Chain of Responsibility Law under this Agreement. As used herein, "Chain of Responsibility Law" means: (i) the Heavy Vehicle National Law Act 2012 of Queensland (the "HVNL Act"), including any regulations made under the HVNL Act, and its equivalent legislation enacted by any State or Territory; (ii) in the case of Western Australia, the Road Traffic (Vehicles) Act 2012, and (iii) any other relevant laws or regulations enacted by the Commonwealth, a State, or a Territory relating to chain of responsibility obligations in respect of driver fatigue, speed limits, mass, dimension, load restraint, and/or dangerous goods. Failure by either party to comply with this section shall be deemed a breach of a material provision of this Agreement and the non-breaching party will have the right to terminate this Agreement and its performance hereunder without any liability to the other party if such breach, if curable, continues uncured for a period of at least thirty (30) days after written notice of such default or breach has been given to the other party.