

Terms and Conditions of Product Sale by Klen International (74) Pty Ltd (KLEN)

1. Acceptance - ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND UPON CUSTOMER'S ASSENT THERETO. THE TERMS AND CONDITIONS CONTAINED HEREIN WILL BE CONTROLLING, AND ANY ADDITIONAL AND/OR INCONSISTENT TERMS AND CONDITIONS SET FORTH IN ANY ACKNOWLEDGMENT, PURCHASE ORDER, OR ACCEPTANCE DOCUMENTS REQUESTED FROM AND/OR PROVIDED BY CUSTOMER ARE EXPRESSLY 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.

2. Delivery - Unless otherwise agreed in writing, if the carrier is ordered by Customer, delivery of orders will be EXW (INCOTERMS 2010) and if KLEN arranges the carrier, delivery of orders will be CIF (INCOTERMS 2010). Shipping and handling fees, special packaging materials (e.g., blue ice), carrier surcharges (including fuel surcharges) and hazardous material fees imposed by government regulation will be added separately to the invoice.

3. Damaged Shipments - Please inspect your KLEN shipment upon receipt. If any external damage is noticed, accept the shipment only after the driver has noted the damage on both his and your copies of the delivery receipt and you have requested an inspection by the carrier. Keep all containers and packing material for inspection. If, upon opening a shipment, you find a shortage or damage, you must request inspection by the carrier within 24 hours of delivery or you will relinquish your right to make a claim.

4. Payment Terms - All prices are subject to change without prior notification. Individual invoices, net thirty (30) days from date of invoice. Payments are to be made in the currency quoted by KLEN, including applicable taxes, and other charges such as government imposed surcharges which KLEN may be required to pay or collect with respect to the sale or transportation of the Products, or the provision of Services. Delinquent accounts will be subject to a service charge on past due amounts of one and one-half percent (1 1/2%) per month (or, if less, the maximum amount permitted by law). Payment by credit card may not be used unless agreed in writing by KLEN.

Customer will provide KLEN, concurrent with each payment, with remittance information in sufficient detail (to the invoice level or line level as the case may be) to allow KLEN to properly apply payments or credit memos to outstanding receivable(s) on KLEN's accounts receivable sub-ledger for Customer. Customer shall also include its account number with any remittance. Failure to supply KLEN with such remittance detail will result in additional processing delays and may affect the credit status of pending or future Customer purchase orders. When Customer wishes to apply one or more credit memos towards a payment amount owed KLEN, Customer agrees to provide KLEN, on a timely basis, the specific credit memo number(s) and amount(s) to be applied, in addition to the remittance information requirements above. If Customer does not provide such information on a timely basis, KLEN shall apply any such credit memos to outstanding receivables, beginning with the most-aged receivables first. KLEN reserves the right to furnish payment history data and related information to third party companies for fraud protection and credit risk reduction.

If required, Customer agrees to complete, sign and submit a standard KLEN credit application to KLEN's Accounts Department. Customer will provide, or make available to KLEN upon request, its latest audited financial statements (or unaudited financial statements, if audits are not performed). KLEN agrees to keep such information confidential and to use it exclusively to evaluate and apply a credit score or rating to Customer for extension of credit purposes or pending transactions. Furthermore, Customer agrees to inform KLEN of any material adverse change in its business that would reasonably be expected (by an independent 3rd party) to negatively impact its outstanding or future payment obligations and the terms or conditions contained herein.

5. Retention of title

(a) The legal and beneficial ownership in Products will not pass to the Customer until full payment has been received for all Products supplied by KLEN to the Customer. This subclause has effect notwithstanding that the Products may have been used in any other process.

(b) KLEN may apply or appropriate amounts received from the Customer in satisfaction of any part of the Customer's obligations to KLEN (including so as to enable KLEN to preserve any purchase money security interest (as defined in the *Personal Property and Securities Act 2009* (Cth) (PPSA)). An application or appropriation by KLEN will override any appropriation made by the Customer. For the purposes of section 14(6)(a) of the PPSA, this clause 5 constitutes the method of payment application agreed by the parties.

(c) Until KLEN receives full payment for all Products supplied to the Customer the Customer holds the Products as a fiduciary agent and/or a bailee of KLEN. The Customer must store the Products separately from all other Products and ensure that the Products are clearly identifiable as KLEN's Products. If required by KLEN the Customer must provide KLEN with a written list of all Products supplied by KLEN but in the possession or constructive possession of the Customer within 24 hours of receiving oral notification from KLEN.

(d) KLEN may without prejudice to any other rights and without liability to any person in trespass or otherwise, enter the premises of the Customer, or any other premises, where the Products are located and recover possession of the Products if:

- (i) payment has not been made for all Products (even if payment has been made for some of the Products) supplied by KLEN to the Customer at any time; or
- (ii) the Customer has a liquidator, provisional liquidator, receiver, receiver and manager, mortgagee's agent, voluntary administrator or deed administrator appointed to it or enters into any scheme of arrangement with its creditors or any other form of insolvency administration (or in the case of an individual commits or is alleged to have committed an act of bankruptcy); or
- (iii) any resolution is passed, or a meeting is called to pass a resolution with the purpose of making an appointment as contemplated in subclause (ii) notwithstanding that such meeting may consider other resolutions.

(e) If before property in and ownership of the Products passes to the Customer, the Customer sells or otherwise deals with any interest in the Products in any form to a third party (including when the Products have been mixed with other Products by manufacturing or in any other way) the Customer does so solely as a trustee for KLEN. The Customer must keep separate and hold on trust for KLEN all monies received and property purchased with such monies from such sale or dealing as relates to the Products. For the purpose of this subclause, such part of any monies received (whether the Products have been sold or used in some manufacturing or other process) that relates to the Products will equal in dollar terms the total amount owing by the Customer to KLEN for the supply of all Products by KLEN to the Customer at the time of receipt of such monies.

6. Personal Property and Securities Act 2009 (Cth)

(a) The Customer acknowledges that this document creates a security interest in the Products in favour of KLEN.

(b) The Customer must do all things and provide all information necessary to enable KLEN to perfect its security interest in the Products (including assisting KLEN to complete registration of any financing statement or financing change statement).

(c) The Customer irrevocably waives its right to receive notice of any verification statement in relation to a financing statement or financing change statement registered by KLEN.

(d) To the extent permitted by law, the Customer and KLEN contract out of sections 125, 143 and (if permitted by section 115(7)) Part 4.3 (other than sections 126, 128, 129(1), 133, 134(1) and 136) of the PPSA and the Customer waives its rights under sections 95, 121(4), 130, 132, 135 and 142 of the PPSA.

(e) The Customer undertakes not to change any of its details recorded in a financing statement registered by KLEN without giving KLEN 10 Business Days' prior notice.

(f) In this clause 6, the terms financing change statement, financing statement and verification statement have the meanings given to them in the PPSA.

7. Sales Tax/Goods and Services Tax – Sales as well as goods and services taxes where applicable (local, state or federal) will be added to the invoice price. If you are exempt from sales taxes, please be sure to provide the proper documentation at the time of ordering.

8. Product Return Policy/Cancellation Fee

(a) The return of goods must be agreed with KLEN on a case-by-case basis, and may be subject to a restocking charge or cancellation fee, particularly if return is due to customer error. For returns not due to KLEN error, customer is responsible for all transportation fees related to the returned product. To ensure proper credit, each Product return must include the following information:

- > Customer Name and Address
- > Purchase Order Number
- > KLEN Shipping Order Number
- > Date of Invoice
- > Item Number
- > KLEN Return Authorization Number
- > Reason for Return

(b) Each return shipment of hazardous materials must be packed and labeled in accordance with applicable regulations applying to transportation of hazardous materials. Shipping documents must also meet applicable transportation regulations. When necessary, Customer shall include with each return shipment of equipment, a certification from an authorized representative of the company that the equipment was properly decontaminated in accordance with current regulations and other recommended guidelines. The product should be shipped to the indicated service center and the transportation charges prepaid. To ensure prompt handling, the return authorization number should be placed on the outside of the package.

9. Product and Service Warranties

Subject to clause 10, KLEN warrants to the Customer only that (i) to the extent reasonably possible, the Products manufactured by KLEN shall have been manufactured to the specifications provided to KLEN in writing by the Customer or Customer's designee; and (ii) all third-party Products will meet the manufacturer's specifications for the periods of time specified by the manufacturer. KLEN makes no representation or warranty regarding the performance of a Product or that such Product will conform to Customer's unique requirements or operating conditions. .

All formulae, drawings, illustrations, descriptive matter and particulars contained in KLEN's catalogues, website and marketing materials are indicative only and do not form a part of this agreement and are not representations and warranties of any kind. KLEN makes no claims or warranties concerning sustainable/green products.

10. Limitation on Liability

In these terms and conditions, **Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth), as amended from time to time, and **Consumer** means a consumer as defined in section 3 of the Australian Consumer Law.

(a) To the extent that Customer acquires goods or services from KLEN as a Consumer, Customer may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement (**Non-excludable Conditions**). Nothing in these terms and conditions (including this clause) operates to exclude, restrict or modify the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would contravene that statute.

(b) Except in relation to Non-excludable Conditions, IN NO EVENT SHALL KLEN HAVE ANY OBLIGATION OR LIABILITY FOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, USE OR GOODWILL, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. THE TOTAL LIABILITY OF KLEN (INCLUDING ITS SUBCONTRACTORS AND AGENTS), IF ANY, FOR DAMAGES RELATING TO ANY PRODUCTS SOLD UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PRICE PAID FOR SUCH PRODUCT(S) AND THE TOTAL LIABILITY OF KLEN (INCLUDING ITS SUBCONTRACTORS AND AGENTS), IF ANY, FOR DAMAGES RELATING TO ANY SERVICES PROVIDED UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID FOR THE SERVICE GIVING RISE TO SUCH CLAIM.

(c) Except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, in respect of which KLEN's liability is not limited under these terms and conditions, KLEN's liability to Customer for a failure (not being a 'major failure' within the meaning of the Australian Consumer Law) to comply with any Non-excludable Condition (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law) is limited, at KLEN's election to: (i) replace (or re-perform the Service), at no cost to Customer, any such defective or non-conforming Product with a non-defective or conforming Product (as applicable) or (ii) credit Customer's account for all amounts paid with respect to the defective or non-conforming Product or Service upon KLEN's receipt of the defective or non-conforming Product.

(d) When the return of the Product is necessary, a return authorization number will be assigned and the Product shipped, transportation charges prepaid. To insure prompt handling, the return authorization number should be placed on the outside of the package and a detailed explanation of the defect enclosed with the Product.

(e) The liability of KLEN under this limited warranty does not extend to any Products which are abused, altered or misused by the Customer or any other persons or entities or which become defective or non-conforming through the actions or inaction of the Customer or any other persons or entities. A defective or non-conforming Product is defined only as a Product which is outside of the defined Product specifications, and shall not include Products that fail to meet any fitness of use by Customer or any unique Customer operating conditions or applications.

11. Export Controls - Products purchased or received under this Agreement are subject to domestic and foreign export control laws, restrictions, regulations and orders. Customer agrees to comply with all applicable export laws, restrictions and regulations of domestic or foreign agencies or authorities, and shall not export, or transfer for the purpose of re-export, any Product to any prohibited or embargoed country or to any denied, blocked, or designated person or entity as mentioned in any such domestic or foreign law or regulation. Customer represents and warrants that it is not on the Denied Persons, Specially Designated Nationals or Debarred Persons List and is not otherwise prohibited by law from purchasing the Products or services hereunder. Customer shall be responsible to obtain any license to export, re-export or import as may be required.

12. Anti-corruption - Customer represents and warrants that (a) 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 (b) Customer 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 Customer in its performance of their obligations under this Agreement or to benefit the other party. Failure by Customer 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 Customer.

13. Proprietary Information - Each party (a "Recipient") shall maintain in confidence, not disclose to any third party, and not use, except for the specific purpose of performing under this Agreement, all proprietary information furnished to it by the other party (a "Discloser") or any Discloser Affiliate in connection with this Agreement, or derived from the Discloser or any Discloser Affiliate in performance of this Agreement, and shall return to the Discloser or a Discloser Affiliate, upon request, all copies (then in Recipient's possession) of documents and other tangible media furnished by or derived from Discloser or such Discloser Affiliate, respectively, in connection with the performance of this Agreement. The Recipient shall inform its employees, agents, and representatives of these obligations and shall require them to assume equivalent obligations.

14. Chain of Responsibility Law - KLEN and Customer acknowledge and agree that each of KLEN and Customer 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 Customer 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.

15. Miscellaneous

(a) Termination - This Agreement may be terminated by either party for convenience at any time upon reasonable written notice delivered to the other party. In the event of any termination or expiration of this Agreement, Customer shall be billed immediately for Products shipped through the effective date of such termination or expiration and all custom Products purchased for Customer in KLEN's inventories at such date, and Customer shall pay the invoiced amount immediately upon receipt of such invoice.

(b) Force Majeure - In the event either party is prevented in whole or in material part from performing its obligations under this Agreement solely as a result of force majeure, 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.

(c) Merger, Modification, Waiver - No amendment, modification or waiver of these terms shall be binding on either party unless reduced to writing and signed by an authorized officer of the party to be bound, and in the case of a waiver, 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 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. 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.

(d) Governing 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.

(e) Authority to Enter Into Agreement - Each party represents and warrants that it is authorized to enter into this Agreement and that in so doing it is not in violation of the terms or conditions of any contract or other agreement to which it may be a party.

(f) 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; provided, however, neither party shall have the right to 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 that either party may assign this Agreement to a parent, subsidiary or successor corporation without such consent).

(g) Nature of Relationship - Neither party, its employees or permitted subcontractors or agents shall, under any circumstances, be considered to be an agent, partner, joint venturer or representative of the other party.