

TRADING TERMS OF KLINGER LTD

1. INTERPRETATION

1.1 In these terms of trade:

- (1) **"Business Day"** means a day other than Saturday, Sunday or a public holiday in the place in which a document is received or an act is done, as may be applicable;
- (2) **"Contract"** means a contract for the sale of goods by the Supplier to the Customer;
- (3) **"Customer"** means the entity purchasing the goods upon these terms of trade;
- (4) **"Incoterms"** means the International Chamber of Commerce Official Rules for the Interpretation of Trade Terms (2000 edition);
- (5) **"Supplier"** means Klinger Ltd ABN 95 008 679 838 and any related body corporate of that company within the meaning of section 50 of the Corporations Act 2001.

1.2 Nothing in these terms of trade shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australian Consumer Law) and which by law cannot be excluded, restricted or modified.

2. CONTRACTS

2.1 Terms of Contract

The only terms of a Contract which are binding upon the Supplier are:

- (1) those set out in these terms of trade or otherwise agreed to in writing by the Supplier;
- (2) any Incoterms stipulated by the Customer that are not expressly rejected by the Supplier; and
- (3) those, if any, which are imposed by law and which cannot be excluded.

Without limitation of the foregoing, the Supplier will not be bound by any terms of trade presented by the Customer subsequently to the receipt by the Customer of these terms of trade (whether contained or referred to in the Customer's order or otherwise) unless the Supplier has expressly agreed in writing to incorporate them in the Contract. In any event, these terms of trade shall prevail over any terms and conditions stipulated by the Customer to the extent of any inconsistency, unless expressly agreed otherwise. The Customer acknowledges that the Supplier will not be deemed to have accepted other terms of trade by the act of accepting the Customer's order.

2.2 Acceptance of Orders

The price list of the Supplier is not an offer to sell but is an invitation to treat only and the Supplier reserves the right to reject in its absolute discretion any order by notice to the Customer within 2 Business Days of receipt of the order. Any order not rejected pursuant to this clause is deemed to be accepted and binds the Supplier and the Customer to a Contract.

2.3 Acceptance of Quotations

Unless previously withdrawn, a Supplier's quotation is open for acceptance within the period stated in it or, when no period is so stated, within 60 days only after its date. The Supplier reserves the right to accept or refuse any order based on a quotation that is older than this period within 5 Business Days after the receipt of the order.

2.4 Cancellation of Orders

Once an order has been accepted under clause 2.2 or a quotation has been accepted under clause 2.3 it cannot be

withdrawn or the Contract cancelled by the Customer without the prior approval of the Supplier. The Supplier may impose conditions upon its approval including the payment by the Customer of reasonable compensation for any work done by the Supplier prior to cancellation of the Contract.

2.5 Promotional Material Not Relevant to Contract

The descriptions, illustrations and representations of performance contained in catalogues, price lists and other advertising matter published by the Supplier do not form part of the Contract or of the description applied to the goods.

2.6 Separate Contract for Each Shipment

The Supplier will be entitled to deliver partial shipments unless expressly prohibited by the terms of an order, and each shipment of goods in respect of which an invoice is raised by the Supplier will be deemed to constitute a separate Contract between the parties.

2.7 Interdependency of Contracts

The Customer acknowledges that a breach by the Supplier of its obligations under a Contract does not constitute repudiation of that Contract or of any other existing Contract between the parties. The Customer's remedies shall be limited to a claim for compensation for the breach in accordance with these terms of trade. On the other hand, a breach by the Customer of its payment obligations under a Contract shall entitle the Supplier to withhold further supply of goods under that Contract or under any other existing Contract between the parties, in addition to the Supplier's right to recovery of monies due.

2.8 Purchase for re-supply

The Customer acknowledges that the goods are acquired and the Customer has held itself out to the Supplier as acquiring the goods for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, or in the course of a process of production or manufacture, or of repairing or treating other goods or fixtures on land.

3. PERFORMANCE

- 3.1 Any performance figures given by the Supplier in respect of the goods are estimates only. The Supplier has no liability for damages for failure of the goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

4. PRICE

4.1 Price Change

The prices shown in the price list are ex-works and are subject to alteration without notice.

4.2 Price of Goods Sold

If the Supplier accepts an order that does not refer to a specific quotation it will supply the goods at the price shown in the price list current when the Supplier accepts the order, unless otherwise agreed in writing.

4.3 Packing and Freight

The cost of any special packing and packaging materials used in relation to the goods and of any freight costs incurred in meeting the Customer's delivery requirements are at the Customer's expense notwithstanding that such cost may have been omitted from any quotation.

4.4 GST

The price at which the goods are sold does not (unless otherwise stated or agreed in writing) include goods and

service tax or other government taxes, which must be added to the price and paid by the Customer as part of the price.

5. DELIVERY

5.1 Collection of Orders

Unless otherwise specified in writing or in an applicable Incoterm the Supplier will prepare each order for collection from the Supplier's premises. The Customer must remove the goods from the Supplier's premises within 7 days of being notified that the goods are ready for collection.

5.2 Delivery Changes

Where a place of delivery other than the Supplier's premises is specified by the Customer, the Supplier will pay the costs of transportation of the goods to the place of delivery, and unless otherwise agreed in writing, the costs will be added to the price and paid by the Customer as part of the price of the goods.

5.3 Delivery Date

If a delivery date is specified that date is an estimate only and the Supplier is not liable for any delay in delivery.

6. ACCEPTANCE AND CLAIMS

6.1 Time for Acceptance

The Customer must inspect the goods immediately upon delivery and must within 14 days after the date of inspection give written notice to the Supplier, with particulars, of any claim that the goods are not in accordance with the Contract. If the Customer fails to give that notice, then to the extent permitted by statute the goods are deemed to have been accepted by the Customer and the Customer must pay for the goods in accordance with the provisions of the Contract.

6.2 Conformity with Specifications

If the goods correspond with the specifications made available by the Customer to the Supplier the goods shall be deemed to conform to the description contained in the Contract. In the event that the specifications comprise both drawings and verbal specifications and there is any inconsistency between the two, then the drawings shall be given precedence in determining whether the goods correspond with the specifications.

6.3 Returns Subject to Supplier's Inspection

All claims of an entitlement to return goods will be subject to inspection of the goods by the Supplier and accordingly acceptance of the return of the goods by the Supplier or its agent will not constitute acceptance of a claim in respect of those goods.

7. LOSS OR DAMAGE IN TRANSIT

7.1 The Supplier is not responsible to the Customer or any person claiming through the Customer for any loss or damage to goods in transit caused by an event of any kind by any person (whether or not the Supplier arranged the carriage or is legally responsible for the person who caused or contributed to that loss or damage).

7.2 The Supplier must provide the Customer with such assistance as may be necessary to press claims on carriers so long as the Customer:

- (1) has notified the Supplier and the carriers in writing immediately after loss or damage is discovered on delivery of goods; and
- (2) lodges a claim for compensation on the carrier within 3 Business Days of the date of delivery of the goods.

8. PAYMENTS

8.1 Payment Terms

(1) The whole amount of the invoiced price shall be due and payable immediately unless terms of credit have been extended by the Supplier.

(2) The terms of credit extended to the Customer (if any) will be specified in the Supplier's invoice.

8.2 Timing of Payment

Payment is deemed to be made:

- (1) If cash is tendered – on the date it is tendered; and
- (2) If a cheque (bank or otherwise) or other negotiable instrument is tendered – on the date upon which the cheque or other negotiable instrument is negotiated and cleared by the Supplier's bankers.

8.3 Time of Essence

Time is of the essence in respect of the Customer's obligation to make payment for goods sold by the Supplier to the Customer.

8.4 Sanctions for Late Payment

If the Customer defaults in making payment to the Supplier in accordance with the Contract the Supplier may in its absolute discretion:

- (1) charge the Customer interest calculated on the portion of the Customer's account overdue at the rate of 1.5% per month from the date on which the default arose;
- (2) require the Customer to reimburse the Supplier for all collection costs including legal costs incurred by the Supplier calculated on a lawyer and client basis as a consequence of the Supplier instructing its lawyer to provide advice to it in connection with the default and/or to institute such recovery process as the Supplier in its discretion decides;
- (3) withhold supply and dispose of any indent and/or stock order held;
- (4) institute legal action for recovery of outstanding balance and costs incurred without notice; or
- (5) terminate credit facilities; and the Supplier shall not be liable to the Customer for any loss or damage resulting directly or indirectly from such action.

8.5 Application of Payments

Any payments tendered by the Customer to the Supplier must be applied as follows:

- (1) first as reimbursement for any collection costs incurred by the Supplier in accordance with clause 8.4(2);
- (2) secondly, in payment of any interest charged to the Customer in accordance with clause 8.4(1); and
- (3) thirdly, in satisfaction or part satisfaction of the oldest portion of the Customer's account.

9. RETURNS

9.1 Terms Applying to all Returns

The Customer must not return any goods including goods which the Customer claims are not in accordance with the Contract (whether or not the goods are deemed to be accepted by the Customer) unless the Supplier has first given its approval to their return and supplied a Returned Material Authorisation ("RMA") for the goods. Their return must then be with freight prepaid by the Customer and the shipping documents must quote the RMA.

9.2 Returns where Goods in accordance with Contract

If the Supplier has given its approval to the return of goods deemed to be accepted under clause 6.1:

- (1) the Supplier will only give credit for the goods returned if they are in a saleable condition and in original packaging; and

- (2) The Supplier may charge a 25% of the price of the goods returned, unless the Customer is a “consumer” for the purposes of the Australian Consumer Law or similar legislation in any other applicable jurisdiction.
- 9.3 **Returns where Goods not in accordance with Contract**
If the Supplier has given its approval to the return of goods which are not deemed to have been accepted by the Customer under clause 6.1 the Supplier must refund the freight to the Customer if the Customer’s claim that the goods are not in accordance with the Contract is found to be valid.
- 9.4 **Supplier’s Nominated Carrier**
Returns must be via the Supplier’s nominated carrier at normal rates, except that if it is impractical to use the Supplier’s carrier the cheapest available service may be used. The Supplier will not accept liability for:
- (1) insurance of goods returned; or
(2) freight at express service rates.
- 9.5 **Returns without Authorisation**
Goods returned to the Supplier without authorization will be at the risk of the Customer. The Supplier reserves the right to dispose of any goods returned without authorization 30 days after receipt without notice to the Customer.
10. **RISK AND INSURANCE**
- 10.1 Goods supplied by the Supplier to the Customer are at the Customer’s risk immediately on delivery to the Customer or into the Customer’s custody (whichever is the sooner). The Customer must insure the goods at its cost from delivery of the goods until they are paid for in full against such risks as it thinks appropriate and produce a certificate to this effect to the Supplier on request.
- 10.2 Clause 10.1 is subject to any applicable Incoterm.
11. **WARRANTY AND LIABILITY**
- 11.1 **Supplier’s Warranty Against Defective Workmanship**
All goods supplied by the Supplier to a Customer that are manufactured by the Supplier are warranted against defective workmanship and materials for a period of 12 months from the date of invoice subject to:
- (1) notification by the Customer of the defect to the Supplier as soon as practicable and in any event within 14 days of occurrence of the defect;
(2) the defect not having been caused by any alterations or damage to the goods made by a party other than the Supplier or by non-compliance with the Supplier’s instructions or standard procedure for use or fitting of the goods;
(3) the defective goods being delivered at the Customer’s expense to the Supplier’s premises for inspection as soon as practicable.
- 11.2 **Other Manufacturer’s Warranties**
If the goods are not manufactured by the Supplier the guarantee of the manufacturer of those goods is accepted by the Customer and is the only guarantee given to the Customer in respect of the goods. The Supplier agrees to assign to the Customer on request the benefit of any warranty or entitlement to the goods that the manufacturer has granted to the Supplier under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- 11.3 **Limitation on Liability**
To the extent permitted by statute the liability, if any, of the Supplier arising from the breach of the warranties referred to in clause 11.1 and clause 11.2 is, at the Supplier’s option, limited to and completely discharged by either:
- (1) the supply by the Supplier of equivalent goods: or
(2) the replacement by the Supplier of the goods supplied to the Customer; and shall not include the cost of removing or refitting the goods, freight or custom duties associated with replacement of goods.
- 11.4 **Exclusion of Other Conditions and Warranties**
Except as provided in this clause 11 all conditions and warranties whether express or implied by law in respect of the state, quality or condition of the goods which may apart from this clause be binding on the Supplier are excluded unless they cannot be excluded and are required to be binding by statute (Australian Consumer Law).
- 11.5 **Customer Must Not Rely on Supplier**
The Customer acknowledges that the Customer does not rely and it is unreasonable for the Customer to rely on the skill or judgment of the Supplier as to whether the goods supplied are reasonably fit for any purpose for which they are being acquired.
- 11.6 **Exclusion of Liability for Negligence**
The Supplier is not liable to the Customer in contract or in tort arising out of, or in connection with, or relating to:
- (1) the performance of the goods or any breach of the Contract; or
(2) any fact, matter or thing relating to the goods; or
(3) any error (whether negligent or in breach of contract or not) in information supplied to the Customer or a user of the goods before or after the date of the Customer’s or user’s use of the goods.
- 11.7 **Limitation of Liability Including Exclusion of Consequential Loss**
Except to the extent provided in this clause 11 the Supplier has no liability to any person for:
- (1) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the goods and/or advice, recommendation(s), information or services provided by the Supplier; and
(2) in particular without limiting clause 11.1(1) the Customer releases the Supplier from any claim action or liability for consequential loss or damage to persons or property including, without limitation, loss of use of the goods or of profits, or loss on resale, arising by reason of delays, non-delivery, defective materials or workmanship, negligence, or any act, matter, conduct or thing done, permitted or omitted by the Supplier.
- 11.8 **Maximum Aggregate Liability**
The Supplier’s maximum aggregate liability to the Customer under or in any way connected with a Contract for damage caused by defective goods supplied by the Supplier is limited:
- (1) where the liability arises from an event or occurrence which is an insured risk under an insurance policy or policies required to be maintained by the Supplier under the Contract to the amount recovered under that policy or policies, or where that amount has been reduced or there is no recovery, due to an act or omission of the Supplier, including without limitation a failure to effect or maintain a policy or policies, a failure to diligently pursue a claim or an act or omission which vitiates a

(2) claim under a policy or policies, the amount that would have been recoverable but for that act or omission, or where the liability arises in circumstances other than those described in the preceding subparagraph (1), to the amount payable by the Customer under the Contract.

12. RETENTION OF TITLE

12.1 When Property Passes

The Property in goods sold under any particular invoice ("Goods") will not pass from the Supplier to the Customer until all monies which are or become due to the Supplier by the Customer for the sale of the Goods or any other goods supplied by the Supplier to the Customer have been paid for in full.

12.2 Relationship of Bailment

The relationship between the Supplier and the Customer in respect of the Goods will be that of bailer and bailee until property in the Goods passes to the Customer.

12.3 Customer's Obligations until Paid for

Until the Goods have been paid for in full the Customer must store the Goods at the Customer's usual place of business and in a manner so that the Goods may be clearly identified as the goods of the Supplier until property in the Goods passes to the Customer.

12.4 Customer's Right to Resell

The Customer will be entitled in the course of its business to resell the Goods before property in the Goods passes to the Customer in which event the Customer will contract as a principal but must hold the proceeds of sale on separate account for the Supplier as a fiduciary obligation.

12.5 Supplier's Authority to Inspect

The Customer irrevocably authorizes the Supplier at any time to enter any premises:

- (1) upon which the Goods are stored to enable the Supplier to inspect the Goods; and
- (2) upon which the Customer's records pertaining to the Goods are held to inspect and copy the records.

12.6 Supplier's Right to Reclaim

Subject to provisions of the PPSA If any monies owing by the Customer to the Supplier are overdue the Supplier may by its employees or agents enter upon the Customer's premises and recover and resell the Goods in which event the Supplier's only obligation to the Customer will be to credit the Customer with the invoiced price of the Goods.

13. INSOLVENCY OF CUSTOMER

13.1 When Breach Occurs

If before property in the goods passes the Customer becomes insolvent for the purpose of the Bankruptcy Act or the Corporations Act 2001 or a receiver or manager of the whole or any part the Customer's business or property is appointed, the Contract for the sale of the goods shall be deemed to be repudiated by the Customer and the repudiation to be accepted by the Supplier, subject at all times to the provisions of Part 5.3A of the Corporations Act 2001.

14. PERSONAL PROPERTIES SECURITIES ACT ("PPSA")

14.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

14.2 The Customer and Supplier agree that the terms of trade and Contract constitute a security agreement and may give rise to a Purchase Money Security Interest ("PMSI") in favour of the Supplier over the goods supplied or to be supplied to the Customer, as grantor, pursuant to the terms of trade.

14.3 The Customer acknowledges and agrees that by assenting to these terms of trade the Customer grants a security interest

(by virtue of clause 12 (Retention of Title)) to the Supplier over all goods supplied by the Supplier to the Customer (if any) and all after acquired goods supplied by the Supplier to the Customer (or for the Customer's account) and this grant of security interest will be effective notwithstanding anything express or implied to the contrary contained in the Customer's purchase order.

14.4 The Customer acknowledges and agrees that the Supplier may apply to register a security interest in the goods at any time before or after delivery of the goods.

14.5 The Customer agrees to do anything required by the Supplier for the purposes of:

- (1) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or enabling the Supplier to apply for any registration, complete any financing statement or financing change statement or give any notification, in connection with the Security Interest; and/or
- (2) enabling the Supplier to exercise rights in connection with the security interest; and/or
- (3) ensuring that the Supplier has priority over all other Security Interests in the goods.

14.6 The Customer waives its right under section 157 of the PPSA to receive the verification statement confirming registration, financing statement or financing change statement relating to a security interest granted by the Customer, as grantor, to the Supplier.

14.7 The Customer must not register a financing change statement as defined in Section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the goods without the prior written consent of the Supplier.

14.8 To the maximum extent permissible at law, the Supplier and Customer agree that sections 95, 121(4), 123(2), 125(1), 130, 132(3)(d), 132(4), 135, 142, and 143 of the PPSA shall be excluded and shall not apply to the enforcement by the Supplier of its Security Interest in the goods.

14.9 The Supplier and the Customer agree not to disclose information of the kind mentioned in section 275(1) of the PPSA and the Customer will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 14.9 does not prevent disclosure where such disclosure is required under section 275 of the PSA because of the operation of section 275(7) of the PPSA.

14.10 The Customer must not create any Security Interest in the goods to any person other than the Supplier.

14.11 For the purposes of section 125 of the PPSA the Customer agrees that a 'reasonable period' shall not mean less than 12 months regardless of the circumstances.

14.12 The Customer agrees to pay the Supplier, on demand all of the Supplier's reasonable legal fees, disbursements, costs and expenses associated with:

- (1) registration, amendment, or discharge of any financing statement registered by or on behalf of the Supplier; and
- (2) enforcement of any security interest granted to the Supplier by the Customer.

14.13 Nothing in this clause is limited by any other provision of these trading terms or any other agreement between the parties.

15. GOODS SUPPLIED ON CREDIT

15.1 The provisions of clause 12, clause 13 and clause 14 apply despite any arrangement between the parties under which the Supplier grants the Customer credit.

16. CLERICAL ERRORS

16.1 Errors and omissions in the Supplier's invoices will not be binding upon the Supplier and may be corrected by the issue of a supplementary invoice or a revised invoice which is

- otherwise in the same terms including the due date for payment.
- 17. PRIVACY**
- 17.1 Please review our online Privacy Policy details the types of data and information that KLINGER Limited collects from you or organisations that trade with us (point 2.0) and how we collect (5.0), use (6.0), store and retain your data (7.0). This privacy policy is relevant to all individuals/ companies that either use our website (referred to as "the service") or trade with us i.e. customers or individuals from a company that request information, a quote or place an order with us.
- 17.2 If you trade with us, KLINGER Limited would like to send you information in the form of marketing emails; about our company, products and services that we think you might like. You have the right at any time to stop KLINGER Limited from contacting you for marketing purposes or giving your data to other members of the KLINGER Group of companies. If you no longer wish to be contacted for marketing purposes, please email: marketing@klinger.com.au or simply opt out of marketing emails by following the unsubscribe link on the bottom of the marketing email.
- 17.3 Where goods are supplied to the Customer on credit the Customer irrevocably authorizes the Supplier, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Customer including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Customer or any other credit providers ("Information Sources") and the Customer authorizes the Information Sources to disclose to the Supplier all information concerning the Customer which is within their possession and which is requested by the Supplier.
- 18. VIENNA SALES CONVENTION**
- 18.1 The application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention 1980 is excluded.
- 19. FORCE MAJEURE**
- 19.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.
- 20. WAIVER**
- 20.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right, and the failure or delay does not preclude either its exercise in the future or the exercise of any other power or right.
- 20.2 A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 21. NOTICES**
- 21.1 A notice or other communication ("Notice") connected with a Contract has no legal effect unless it is written in English and:
- (1) delivered by hand at the address of the addressee set out in a document that together with these terms of trade comprises the Contract or is subsequently notified ("the Address Details");
- (2) sent by post, postage prepaid, to the address of the addressee set out in the Address Details; or
- (3) sent by facsimile transmission to the number of the addressee set out in the Address Details.
- 21.2 A Notice is deemed given and received:
- (1) If hand delivered, upon delivery;
- (2) If sent by post, on the 2nd Business Day after posting, if sent and received within the same country, and on the 5th Business Day after posting, if sent in one country and received in another; or
- (3) If sent by facsimile before 4pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 21.3 Despite clause 21.2(3) a facsimile is not deemed given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmissions report which indicates that the relevant number of pages comprised in the Notice have been sent.
- 22. GOVERNING LAW AND JURISDICTION**
- 22.1 Where the Customer is located within Australia, the law of the State or Territory in which the goods are sold governs the Contract, and in the event of a bona fide dispute as to the place of sale the law of Western Australia will apply.
- 22.2 The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory.
- 22.3 Where the Customer is located outside Australia, the law of Western Australia governs the Contract and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.
- 23. SEVERABILITY OF PROVISIONS**
- 23.1 The parties agree:
- (1) that any illegal or unenforceable provision will be severed from this document and will not affect the continued operation of the remaining provisions which are self-sustaining and capable of separate enforcement; and
- (2) use their best endeavours to replace any severed provision with a legal and enforceable provision having a commercial import as close as permissible to the severed provision.
- 23.2 Notwithstanding that any provision of this document which is prohibited or unenforceable in any jurisdiction shall be construed to be ineffective to the extent of such prohibition or unenforceability in that jurisdiction, this construction will not affect the validity or enforceability of the provision in any other jurisdiction."