

## TERMS & CONDITIONS OF SALE

### 1. Definitions

In these Terms and Conditions of Sale:

**ACDC** has the meaning specified in clause 13;

**Capital City** refers to any of Adelaide, Brisbane, Canberra, Hobart, Melbourne, Perth and Sydney;

**Company** means KARNDEAN INTERNATIONAL PTY LTD (ABN 94 052 427 853);

**Dispute** has the meaning specified in clause 13;

**GST** means goods and services tax;

**Price** means the price of the Products applicable at the time of the order;

**Products** means the products of the Company;

**Policy** means the policy in place at the date of invoice;

**Indent Products** means products that are not stocked (ie – ranged) at the Company's relevant distribution centre

**Customer** means any party purchasing the Products;

**Terms** means these Terms and Conditions of Sale.

### 2. Orders

- a) The Customer will order Products from the Company using an order form approved by the Company. Orders will be accepted by the Company only upon and subject to these Terms, which prevail over any other terms. The Company will notify the Customer in writing whether the order is accepted or not. The Company will endeavour to deliver Products within the time(s) specified in the order, however, the Company is not liable for any loss or damage (including direct, indirect or consequential loss or damage) arising from any delay in delivery. The Customer may modify or cancel its order only if it notifies the Company and receives confirmation by the Company of the notification before the order has been processed.
- b) Should the Customer order a product that is an Indent Product, the Customer shall be notified at the time and once the order is placed, no cancellations or amendment shall be accepted by the Company
- c) The Customer shall advise the Company of one (only) delivery address per trading account. The Company has no obligation to deliver to varying delivery addresses on an 'order by order' basis. Where the Company agrees to deliver to an alternative address the applicable Policy will apply.

### 3. Price and Payment

- a) The order will be at the Prices plus applicable GST. The Prices are inclusive of delivery to the Customer's premises where the premises are located in a Capital City.
- b) The withholding or granting of credit shall be at the absolute discretion of the Company
- c) The Customer must pay the Company for an order, the cumulative Price plus GST for the Products by the end of the following month from the date of the invoice.
- d) If the Customer fails to pay for any products as required by this clause then, without prejudice to any other right or remedy, the Company shall be entitled to charge interest on the outstanding amount from the date of the invoice until paid at a rate calculated in accordance with section 2 of the Penalty Interest Rate Act (Vic) 1983 fixed at the rate of default

### 4. Handling Charge

Each order will incur a handling charge specified from time to time by the Company plus applicable GST.

### 5. Damaged and Lost Products

- a) For each order, the Customer must notify the Company in writing if the items are short delivered, damaged or have any defects at time of delivery and within 3 days of receipt by the Customer or else the order is deemed to have been fulfilled in full by the Company. The Company will not accept claims for shortage of Product or damage or defect (except under clause 12) if the above requirements are not strictly adhered to.
- b) The Company shall not accept any claims for damaged or lost product should the damage or loss be attributable to the Customer's nominated freight forwarder

### 6. Return of Products

- a) All Products are supplied by the Company to the Customer on a strictly non-return basis.
- b) Should the Company (at its sole discretion) agree to accept the return of any of the Products, the Product returns require an authorisation number as issued by the Company.
- c) Returned products must be returned in good order and condition, unused and in original packaging
- d) Where the Company agrees to accept a return, a fee will be payable in accordance with the applicable Policy.

### 7. Title and Risk

- (a) Ownership in any Products supplied by the Company to the Purchaser will pass when such Products have been paid for in full to the Company.
- (b) The risk in any Products will pass to the Purchaser, and the Purchaser accepts the responsibility for and will carry the loss arising from damage to the Products however caused:
  - i. once the Company delivers such Products to the Purchaser's delivery address so long as the Purchaser's delivery address is within the metropolitan area of a Capital City;
  - ii. when the Company delivers to a nominated forwarder in respect of the Purchaser's delivery address which is outside the metropolitan area of a Capital City;
  - iii. when the Purchaser collects or causes to be collected the Products, or where the Company causes them to be delivered by an independent carrier from the Company's premises, then as from the time they leave the Company's premises.
- (c) Without derogating from any of the above where the Company still owns certain Products, the Customer has the right to resell such Products in the ordinary course of business provided that such sales will not give rise to obligations on the Company or detract from the Purchaser's fiduciary duties to the Company.
- (d) The Customer shall notify the Company in writing of any intended sale of the Customer's business, which includes or purports to include the Products as part of the Customer's plant, equipment or inventory. In such a case the Customer must pay the full amount outstanding to the Company prior to the settlement of the sale of the Customer's business

### 8. Change of Terms

These Terms are subject to change without notice.

### 9. Notices

Notices to either party hereunder will be in writing and may be served personally or by sending a facsimile to the party's last known business facsimile number or by being delivered to the party's last known business address or by being posted by prepaid letter addressed to such party at such address. In the case of service by post the notice will be deemed served on the business day following posting.

### 10. Resale

The Customer can sell the Products at such prices as its determines and on terms and conditions it determines, provided that it may not resell the Products to another person who will resell the Products.

### 11. Indemnity and insurance

- (a) Certain items of Products will have a guarantee which will set out the Company's liability under the guarantee. Notwithstanding any written Company guarantee, to the maximum extent permitted by law, all conditions, warranties, representations, liabilities and obligations, whether implied or imposed by statute or otherwise in respect of the Products and the supply of the Products are excluded and all liability for loss or damage, whether direct, indirect or consequential is excluded.
- (b) Except to the extent:
  - (i) that the exclusion, restriction or modification of certain conditions, warranties, liabilities and rights is prohibited by the Australian Consumer Law; and
  - (ii) of any express warranty against defects,
  - (iii) any conditions, warranties or rights implied to Customer's benefit by legislation, conduct or common business practice are hereby excluded to the maximum extent permissible; and
  - (iv) the Company shall not be liable for any defects or damage caused in whole or in part by misuse, abuse, neglect, or accident;
  - (v) the Company's total maximum liability in relation to any order is the amount paid by the Customer in relation to that order.

- (c) Where the Products are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer's remedy under Part 3-2 of the Australian Consumer Law, other than in respect of sections 51, 52 or 53, is limited to one or more of:
  - (i) the replacement of the Products;
  - (ii) the supply of equivalent goods; or
  - (iii) the cost of replacing the Products or of acquiring equivalent goods;
  - (iv) the cost of having the Products repaired.
- (d) Where any services supplied by the Company are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Customer's remedy under Part 3-2 of the Australian Consumer Law is limited to one or more of:
  - (i) the supply of the services again; or
  - (ii) the payment of the cost of having the Services supplied again.
- (e) Where the Company is deemed to be a "manufacturer" for the purposes of Part 5-4, Div 3 of the Australian Consumer Law, then where the Products are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Company's liability under section 274 of the Australian Consumer Law is limited to the lowest of:
  - (i) the cost of replacing the Products;
  - (ii) the cost of obtaining equivalent goods;
  - (iii) the cost of having the Products repaired.
- (f) The limitation in paragraphs (c), (d) and (e) above do not apply where the Customer establishes that the limitation is not fair and reasonable.
- (g) The Customer acknowledges that:
  - (i) the Company will not be liable (in any way) for any product defect claim arising from the Customer's installation of the Products which have not been done strictly in accordance with the Company's recommended methods; for shade variation once the Products have been laid, it being understood that shading of a Product can vary from batch to batch;
  - (ii) the Company will not be responsible for any installation complaints if adhesives other than the appropriate the Company adhesives or other double bond system adhesive authorised by the Company is used;
  - (iii) the Customer must not resell Products that have been damaged in transit, storage, by handling or having reached the end of the durable life of the Products; and
  - (iv) the Company will not be responsible for consumer complaints related to:
    - a. Products that have reached the end of their durable life; or
    - b. damage to Products attributable to the manner in which Products had been carried, stored or handled (other than by the Company) will be the responsibility of the Customer.
  - (h) If the Customer is of the opinion that the cause of the complaint is a defect inherent in the Products, the Customer must notify the Company immediately and where possible forward the Products or samples for testing.
  - (i) In no event will the Company be liable to the Customer for loss of sales or other direct, indirect or consequential loss.

### 12. Dispute Resolution.

A party seeking to resolve a dispute relating to these Terms (**Dispute**) must notify the other party in writing and both parties must use their best endeavours to resolve the dispute by negotiation for a period of 30 days from the date of the written notice. If the parties fail to resolve the dispute in that thirty-day period, either can they must refer the dispute to mediation under the rules of conciliation of the Australian Commercial Dispute Centre (ACDC). If the dispute is not resolved within thirty days from the date of referral to the ACDC, either party is free to commence court or tribunal proceedings. Nothing in this clause will prevent a party from seeking interlocutory relief through courts of appropriate jurisdiction.

### 13. Governing Law.

The Terms are governed by the laws of the State of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

### 14. Entire agreement.

The Terms contains the whole of the agreement between the parties regarding the supply of Products.

### 15. Waiver.

Any failure by a party to compel performance by the other party of any of the Terms will not constitute a waiver of Terms or conditions or diminish rights arising from their breach.

### 16. Use of Name or Logo.

The parties will not use the name, logo or other indicia of the other party without the prior written consent of that party.

### 17. Force Majeure.

If a party is prevented from performing its obligations under the Terms because of a circumstance beyond its reasonable control the obligations of that party will be suspended for so long as that circumstance continues.

### 18. Severance.

Any illegal or invalid provision of the Terms will be severable to the extent required to make this agreement enforceable and all other provisions will remain in full force and effect.

### 19. Assignment.

The Customer may not assign its rights or obligations under the Terms without the prior written consent of the Company.

### 20. Relationship.

Each party enters the Terms as an independent contractor and nothing in the Terms will create any other relationship between them, including any relationship of partnership, agency, trust, joint venture or otherwise.