

Trading Terms

Kenso Agcare Pty Ltd ABN 49 115 269 460 ("Kenso Agcare") is pleased to be doing business with you. Our terms of trade ("Trading Terms") are set out below. They govern our business relationship with you and should be read carefully.

1. Definitions

1.1 In this agreement:

- "Moneys" means all moneys now or in the future actually or contingently owing by the Purchaser to Kenso Agcare on any account and includes any part of those moneys;
- "Purchaser" means the other party or parties to a contract for sale of the Products;
- "PPSA" means Personal Property Securities Act (2009) (Cwth) and its associated regulations as varied from time to time;
- "PPSR" means Personal Property Securities Register established under the PPSA.
- "CoR" means Chain of Responsibility under the Heavy Vehicle National Law and its associated Acts and Regulations as varied from time to time.

2. General

- 2.1 Except as expressly provided in these Trading Terms, these terms and conditions constitute an exclusive statement of the agreement between Kenso Agcare and the Purchaser with respect to sales of the Products, despite any provisions to a contrary effect in any of the Purchaser's order forms or other documents.
- 2.2 These Trading Terms supersede all prior arrangements written or oral.
- 2.3 Kenso Agcare may update these Trading Terms at any time without prior notice
- 2.4 The Purchaser's acceptance of these Trading Terms in relation to any contract for sale of the Products is signified by the making of an order for the Products where the Purchaser has previously received a copy of these Trading Terms, whether such copy was contained in an invoice in relation to any previous contract for sale of the Products or otherwise.

3. Price and Discount

- 3.1 A price list will be published by Kenso Agcare from time to time.
- 3.2 Kenso Agcare may vary the price list without notice, however, will make every effort to give prior notice of any variation of price.
- 3.3 Unless expressly included, all pricing expressed or described in any quotation or agreement is exclusive of drum levies and GST. The customer must pay an additional amount equal to that of any applicable drum levy and GST.
- 3.4 Orders will be supplied:
 - a. At the price quoted by Kenso Agcare at the time of order; or
 - b. At the price prevailing at the date of delivery (if no price is quoted).
- 3.5 Cash settlement discounts applied to specific payment dates will be strictly adhered to.
- 3.6 Cash settlement discounts may be reversed if payment is not made by the agreed date.

4. Payment

- 4.1 Payment will be strictly cash on delivery unless credit terms are agreed in writing.
- 4.2 Credit terms will only be available, at Kenso Agcare's absolute discretion, upon approval of a written application for this purpose. The written application will contain or annex such financial information and documents such as Kenso Agcare may require. Kenso Agcare will treat this information in a confidential manner. As a condition of providing credit, Kenso Agcare may require the provision of personal guarantees or other forms of security.
- 4.3 If credit terms are approved, payment for Products must be made by the Purchaser and received by Kenso Agcare on or by the 30th day from the date of invoice unless otherwise agreed in writing, and delivered in accordance with clause 6.
- 4.4 If any payment in respect of a contract for sale is not made in full within the agreed periods, Kenso Agcare is entitled to do any one or more of the following (without limiting its other legal rights):
 - a. Rescind and terminate the contract for sale and any other contract for sale Kenso Agcare may have with the Purchaser;
 - b. Refuse to make, or suspend, delivery of Products (whether or not ordered);
 - c. Demand and receive immediate payment of any invoice in respect of a contract for sale whether payment is then due or not;
 - d. Charge interest on the overdue amount at the interest rate of twelve percent (12%) per annum until payment in full;
 - e. Terminate or suspend any credit arrangements with the Purchaser;
 - f. Reverse any rebates or discounts allowed;
 - g. Provide details of the payment default to a credit reporting agency;
 - h. Recover in full from the purchaser all costs and expenses incurred by Kenso Agcare in enforcing its rights under these Trading Terms (included legal costs on a solicitor and own client basis); and
 - i. Exercise any other rights at law including those pursuant to the PPSA.
- 4.5 All losses, expenses and costs, including legal fees on an indemnity basis, consequent upon the Purchaser's failure to pay on the due date, are recoverable from the Purchaser by Kenso Agcare.
- 4.6 For security and other reasons, Kenso Agcare may from time to time request payment, and the Purchaser shall provide payment, in one form or another, or partly in one form and partly in another.

5. Orders

- 5.1 Kenso Agcare shall be under no obligation to accept the whole or any part of any order, unless otherwise agreed.
- 5.2 An order constitutes an offer by the Purchaser to purchase the Products on and subject to these Trading Terms.
- 5.3 Acceptance of any order, or part of any order, occurs when the Products the subject of an order, or such part of the order, are delivered to the Purchaser.
- 5.4 If the Purchaser cancels an order, it must pay Kenso Agcare for any loss, damage or expense incurred by Kenso Agcare in relation to the supply or proposed supply of the Products.

- 5.5 Orders received by Kenso Agcare that do not reach the minimum order value of \$1000, may be subject to an administration fee of \$50.
- 5.6 Goods sold are non-returnable unless otherwise negotiated.

6. Delivery

- 6.1 Kenso Agcare will use its best endeavours to deliver the Products within the time agreed when the Products are ordered. However, delivery time is not guaranteed and might be delayed by circumstances beyond the reasonable control of Kenso Agcare (for example, industrial disputes, accidents, transport delays, default of sub-contractors etc).
- 6.2 Due delivery shall be deemed to have been made on receipt by Kenso Agcare's warehouse or appointed carrier of an invoice or delivery note signed by an authorised representative of the Purchaser or carrier appointed by the Purchaser.
- 6.3 Kenso Agcare shall not be liable for any loss or damage, including consequential loss, suffered by the Purchaser arising from or related to any late delivery or failure to make delivery of an order whether in whole or in part.
- 6.4 The Purchaser's failure to take delivery of the Products shall not affect the Purchaser's liability to pay the price for the Products and delivery of the Products.

7. Risk and Retention of Title

- 7.1 The risk of loss of or damage to the Products shall pass to the Purchaser from the time of delivery by Kenso Agcare to the nominated carrier for intended delivery to the Purchaser or the Purchaser's agent.
- 7.2 Title to the Products delivered does not pass to the Purchaser until payment in full for those Products has been received by Kenso Agcare.
- 7.3 Until the title passes to the Purchaser, the Purchaser is in a fiduciary relationship with Kenso Agcare and is a bailee only of the Products.
- 7.4 Without limiting any other remedies Kenso Agcare may have, if payment is not made by the due date Kenso Agcare may, without giving notice to the Purchaser, enter the premises where Kenso Agcare reasonably believes the Products are situated and re-take possession of the Products.
- 7.5 Until payment in full, the Purchaser must ensure that the Products remain clearly identifiable as property of Kenso Agcare and the Purchaser shall not remove any identifying marks placed on the Products by Kenso Agcare.
- 7.6 Kenso Agcare does not charge a deposit on any packaging. The ownership of any packaging transfers to the buyer upon invoice.

8. Personal Properties Security Act (2009) (Cwth)

- 8.1 The Purchaser acknowledges and agrees that by entering into a contract of sale under these Terms, the Purchaser grants a Security Interest to Kenso Agcare in the goods and any proceeds of sale in respect to those goods and also consent to Kenso Agcare registering any one or more Financing Statements or Financing Change Statements in respect to any such Security Interest created by or contemplated by these Terms.
- 8.2 The Purchaser and Kenso Agcare agree for the purposes of satisfying s20(1)(iii) of the PPSA, that the description of goods as shown on any invoice from Kenso Agcare is the subject of each and any Security Interest created under these terms and every invoice is incorporated into these terms.
- 8.3 The Purchaser agrees that they are the grantor and Kenso Agcare is the holder of a Purchase Money Security Interest (PMSI) by virtue of these terms or the PPSA.
- 8.4 The Purchaser agrees that the following provisions of the PPSA will not apply to these terms: Sections 95, 96, 125, 129, 130, 132(3)(d), 132(4), 135, 142 and 143
- 8.5 The Purchaser waives pursuant to section 157(3)(b) of the PPSA the right to receive notice of a Financing Statement, Financing Change Statement or a Verification Statement in relation to any registration of the PPSR.
- 8.6 Solely to preserve their confidentiality, to the extent allowed under section 275 of the PPSA, the Purchaser, and Kenso Agcare agree that neither will disclose information if requested by a third party under section 275(1) of the PPSA.
- 8.7 The Purchaser agrees with Kenso Agcare that they will not enter into any agreement or arrangement which permits any other person to register any Security Interest in respect to unpaid goods, proceeds of sale of unpaid goods or any accounts owed in respect of the unpaid goods without Kenso Agcare's consent.
- 8.8 The Purchaser agrees to give Kenso Agcare at least 14 days written notice before changing any of the corporate details such as name, ABN, ACN or principle place of business.
- 8.9 The Purchaser agrees to reimburse Kenso Agcare for all costs and / or expenses incurred or payable by Kenso Agcare in relation to registering, maintaining or releasing any Financing Statement, or Financing Change Statement under these terms.
- 8.10 The Purchaser agrees that any rights of Kenso Agcare under this document are in addition to and not in substitution for its rights under the PPSA.

9. Chain of Responsibility

- 9.1 Kenso Agcare is committed to ensuring as far as is reasonably practicable that any carriage of goods by road that may be performed as part of a service to the Purchaser is performed safely and in accordance with the Heavy Vehicle National Law and its CoR provisions. This commitment extends to eliminating, or where elimination is not possible, minimising safety risks and the risk of damage to road infrastructure. Kenso Agcare will not comply with any directive or instruction by the Purchaser that might have the effect of contributing to a breach of the Heavy Vehicle National Law or preventing Kenso Agcare from taking all steps that it considers to be necessary to prevent any breach of the Heavy Vehicle National Law or to otherwise comply with the duties of care under the Heavy Vehicle National Law.
- 9.2 Kenso Agcare has a policy of compliance with its CoR obligations which is subject to regular audit and requires its sub-contractors to also have in place a policy of CoR which is subject to audit and review. In the event of a breach of CoR obligations by the Purchaser, Kenso Agcare may cease the provision of further services.
- 9.3 Kenso Agcare will not comply with any directive or instruction by the Purchaser that may cause a driver to exceed a speed limit or to drive while fatigued or in breach of a work or rest requirement under the Heavy Vehicle National Law.

9.4 The Purchaser warrants to Kenso Agcare that after delivery of the goods to the nominated carrier, purchaser, or purchasers agent, and whilst Kenso Agcare retains any interest in the goods, the Purchaser will comply with all applicable Acts, Regulations and Laws dealing with the transport, unloading, storage, sale or use of dangerous or hazardous materials.

10. Warranties and Conditions

10.1 All implied warranties and conditions are excluded to the maximum extent permitted by law.

10.2 To the maximum extent permitted by law, Kenso Agcare is not liable for:

- a. Any loss or damage to the Products resulting from any act or omission on the part of the Purchaser, or the employees, contractors or agents of the Purchaser;
- b. Any special, consequential, direct or indirect loss or damage incurred by the Purchaser.

10.3 Kenso Agcare's liability for breaches of express and implied conditions and warranties in relation to the Products are limited to, at Kenso Agcare's election, the replacement of the Product or the payment of the cost of replacement of the Product.

10.4 Subject to clause 9.3, Kenso Agcare shall bear no liability or responsibility for the manufacture of the Products, or for direct or indirect consequential damages in relation to the delivery or use of the Products, whether or not Kenso Agcare provides any advices to the Purchaser in relation to the Products.

10.5 The Purchaser shall examine the Products after delivery and immediately inform Kenso Agcare of any alleged defect in the Products. To the maximum extent permitted by law, Kenso Agcare shall have no liability to the Purchaser for any defect which visual examination would ordinarily reveal unless Kenso Agcare receives written notification within two (2) business days from the date of delivery.

10.6 The Purchaser grants Kenso Agcare full and free access to the premises owned or occupied by them to enable Kenso Agcare to investigate any claim made. Kenso Agcare's investigation of any claim does not constitute admission of liability.

10.7 All freight, handling and other charges in relation to the return of goods are the responsibility of the Purchaser.

10.8 Kenso Agcare observes the right to credit back any return of goods at either the original purchase price, the current price list price, or an agreed price.

10.9 Kenso Agcare observes the right to back date invoices for orders placed for replacement of returned goods, in line with the original date on the invoice of the goods being returned.

10.10 Kenso Agcare observes the right to charge an administration fee for processing of returns.

10.11 The supply of products to the Purchaser does not grant the customer any intellectual property rights in or related to the products or Kenso Agcare's trademarks which remain the exclusive property of Kenso Agcare.

11. Rescission

11.1 Kenso Agcare may, in addition to any other course of action available to it, elect to terminate or rescind any contract of sale by notice in writing to the Purchaser if the Purchaser;

- a. Is served with any proceedings under the Bankruptcy Act or the winding-up provisions of the Corporations Law or similar legislation;
- b. Is insolvent or unable to pay its debts as and when they fall due;
- c. Is placed in liquidation, provisional liquidation, voluntary administration or if it or any of its assets are placed in receivership or under external management or control; or
- d. Commits a breach of these terms and fails to remedy such breach after being given seven (7) days written notice by Kenso Agcare to do so.

11.2 On termination or rescission, all invoices rendered by Kenso Agcare are payable immediately, without demand.

12. Force Majeure

12.1 Kenso Agcare will have no liability to the Purchaser in relation to any loss, damage or expense caused by Kenso Agcare's failure to complete an order, delivery, or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock out, war, or the inability of Kenso Agcare's suppliers to supply necessary products or any other matter beyond Kenso Agcare's control.

13. Purchaser's Warranties

13.1 The Purchaser warrants that:

- a. The Purchaser is a party to a contract for sale of the Products as a principle in its own right. If the Purchaser acts as agent or trustee of a trust, it must inform Kenso Agcare in writing of the details of this relationship.
- b. Any financial information Kenso Agcare may require the Purchaser to provide, is true and accurate and the Purchaser will keep Kenso Agcare informed of any material adverse change.

14. Severance

14.1 Should any part of these Trading Terms and Conditions be held to be void or unlawful, these Trading Terms are to be read and enforced as if the void or unlawful provisions had been deleted.

15. Governing Law

15.1 A contract for sale of the Products is to be governed and construed in accordance with the law in effect in Queensland.

15.2 The parties accept the non-exclusive jurisdiction of the Courts in Queensland in relation to any dispute between them.

Please return this completed document to Kenso Agcare

Email: orders@kenso.com.au

Or Post: Level 1, 98 Commercial Road, Teneriffe QLD 4005

For queries please phone 07 3216 1188 or get in touch with your Kenso Regional Manager

Southern WA – John Mason – 0407 546 009

Northern WA & NT – Steve Cameron – 0412 140 188

SA – Charles Hazelton – 0456 649 749

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