



Standard Terms and Conditions

Pro Kleen Environmental Services, LLC ("Pro Kleen") provides the following Standard Terms and Conditions of Service ("Terms and Conditions"), which apply to all quotations and services ("Work") made or performed by Pro Kleen. All purchases by customer, owner, any subsidiary or affiliate, or their agents (all referred to as "Purchaser") are expressly limited and conditioned upon acceptance of the following Terms and Conditions, and no provision, printed or otherwise, contained in any order, acceptance, confirmation, or acknowledgement which is inconsistent with, different from, or in addition to these Terms and Conditions is accepted by Pro Kleen unless specifically agreed to in writing by Pro Kleen. Acceptance of Purchaser's orders by Pro Kleen is subject to verification of Purchaser's creditworthiness.

- 1. TERM AND SCOPE.** These Terms and Conditions shall be evergreen and shall apply to all transactions between Pro Kleen and Purchaser unless different terms and conditions are agreed to in a writing signed by both Pro Kleen and Purchaser. Purchaser may engage Pro Kleen from time to time to provide Work on behalf of Purchaser as such Work is requested by Purchaser on a project-by-project basis and accepted by Pro Kleen pursuant to a completed purchase order or other document issued by Purchaser to authorize the Work ("Authorizing Document") and these Terms and Conditions. Any boilerplate terms and conditions on the Authorizing Document or other documents provided by Purchaser shall have no effect. Each Authorizing Document, along with the Terms and Conditions stated herein and any other exhibits related to that particular Work shall constitute a separate contract. Purchaser is under no obligation to use any particular services of Pro Kleen unless an Authorizing Document is agreed upon and issued to Pro Kleen. Pro Kleen agrees to perform the Work in a professional manner, with the standard of care, skill and diligence normally provided in the performance of similar services. Pro Kleen shall ensure that its employees and agents engaged to perform the Work are suitably experienced and have the necessary expertise to complete the Work, and Pro Kleen shall use all reasonable efforts to complete the Services by the completion date specified in each related Authorizing Document.
- 2. RATES AND PAYMENT TERMS.** The rates for Work are set forth in Pro Kleen's quote and should be reflected in Purchaser's order. Rate increases may be based on demonstrated, industry wide increases in Work rates or on regional increases in Pro Kleen's costs. Unless otherwise specified in Pro Kleen's quote, and as provided in the preceding sentence, the rates are subject to change at Pro Kleen's discretion upon thirty (30) days written notice to Purchaser. Purchaser shall make payment to Pro Kleen in net thirty (30) days after Purchaser's receipt of Pro Kleen's invoice. In the event Purchaser disputes any portion of any invoice, Purchaser shall give Pro Kleen written notice of such disputed portion within ten (10) days after Purchaser's receipt of such invoice and shall pay to Pro Kleen the undisputed portion of the invoice without delay. Once any disputed portion is settled, Purchaser shall pay the settled amount, if any, within the original payment timeframe, or if such original timeframe has already elapsed then payment shall be due immediately. If Purchaser fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of 10% per annum, or the maximum amount allowed by law if less, from the date due until paid according to the provisions of these Terms and Conditions. Interest shall not be charged on any disputed invoice item that is finally resolved in Purchaser's favor.
- 3. CHANGES TO AUTHORIZING DOCUMENT.** From time to time, Pro Kleen or Purchaser may request changes in an Authorizing Document to modify the Work. Upon agreement between the parties as to such change and any related fee adjustments, Purchaser shall issue a new Authorizing Document to cover the additional or otherwise modified Work.
- 4. TAXES.** Federal, state, or local indirect taxes, including but not limited to sales and/or use taxes, VAT taxes, GST taxes, transfer taxes or any similar tax are not included in the prices set forth in Pro Kleen's quotes unless specifically stated otherwise.
- 5. WARRANTY.** Pro Kleen warrants that the Work will conform to the descriptions set forth in Pro Kleen's quote at the time of completion of the Work. THIS WARRANTY DOES NOT APPLY TO ANY OF SUCH PRODUCTS, SUPPLIES AND MATERIALS WHERE DAMAGE HAS DEVELOPED FROM IMPROPER HANDLING OR USE BY PURCHASER OR THIRD PARTIES. THE COMBINATION OF SUCH PRODUCTS, SUPPLIES AND MATERIALS WITH ANY OTHER PRODUCT OR CHEMICAL, NOT EXPRESSLY APPROVED BY PRO KLEEN SHALL AUTOMATICALLY CANCEL ANY WARRANTIES. THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE IN CONNECTION WITH PERFORMANCE OF THE WORK, OR THE PRODUCTS, SUPPLIES AND MATERIALS USED IN CONNECTION WITH SUCH PERFORMANCE. PRO KLEEN'S LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY IN ANY CAUSE OF ACTION WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE, ARISING OUT OF PERFORMANCE OF THE WORK IS EXPRESSLY LIMITED TO THE REPLACEMENT OF THE PRODUCTS, SUPPLIES, OR MATERIALS USED IN CONNECTION THEREWITH UPON THEIR RETURN TO PRO KLEEN OR, AT PRO KLEEN'S OPTION, TO THE ALLOWANCE TO PURCHASER OF CREDIT FOR THE COST OF SUCH ITEMS.
- 6. CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. THIS LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.** In no case will Pro Kleen's liability exceed the amount paid to Pro Kleen by the Purchaser for the specific goods or service giving rise to such liability.
- 7. INSURANCE.** Upon request, Pro Kleen can provide a certificate of insurance to Purchaser evidencing Workers' Compensation, Employer Liability, General Liability and Auto Liability coverages. Specific amounts of coverage will be outlined in the certificate, but are not less than \$1,000,000 or, if less, as statutorily required.
- 8. TERMINATION AND SUSPENSION.** Both Pro Kleen and Purchaser shall have the right to terminate or suspend any and all Work upon written notice to the other party if the other party is placed in bankruptcy, or if a receiver be appointed for its properties, if it makes an assignment for the benefit of creditors, or if it is violating any of the material conditions or agreements of these Terms and Conditions. However, Purchaser shall pay stated standby rates, or if no standby rate is established, then any increased costs incurred by Pro Kleen during any suspension or delay of Work by Purchaser to the extent such suspension is not due to the fault of Pro Kleen. Pro Kleen shall have the express right to terminate or suspend any and all Work if amounts due are continually late and/or not paid.
- 9. CONFIDENTIALITY.** The parties hereto covenant and agree each with the other that any trade and other secret processes, information, data, or designs given, disclosed, or supplied by one to the other will at all times thereafter be kept confidential by such other party and such other party will not at any time thereafter disclose any such trade or other secrets, processes, information, data, and designs to any person, firm, or corporation whomsoever or whatsoever, except to the extent that the same is or are (a) part of the public domain; (b) in the prior possession or knowledge of the receiving party; (c) obtained by the receiving party from third parties as a matter of right and without restrictions as to disclosure; or (d) required to be disclosed to any federal, state or local court or agency, in which case, notice shall be given as soon as practicable to allow a party to dispute the required disclosure in such court or agency.
- 10. INTELLECTUAL PROPERTY RIGHTS.** There shall be no transfer of rights to, or interest in, any intellectual property as part of the Work or otherwise under these Terms and Conditions, regardless of the ability to patent or otherwise protect such intellectual property. Each party shall retain all right, title and interest in any documents, processes, know-how, trade secrets or other intangibles as the same were owned before this agreement went into effect. Further, each party shall retain all right, title and interest in any documents, processes, know-how, trade secrets or other intangibles developed by such party during the course of the Work or otherwise under these Terms and Conditions. Purchaser shall be allowed to keep copies of any reports or other documentation submitted to Purchaser by Pro Kleen that contains recommendations or other intellectual property created by Pro Kleen as part of the Work, but the same shall not be considered "work product" or "work made for hire" for purposes of determining ownership of, or any other rights to, the contents of such reports or documentation.
- 11. MUTUAL INDEMNITY.** Each party shall defend, indemnify, and hold harmless the other party from any and all losses and damages claimed by a third party in any action or proceeding, against the indemnified party alleging bodily injury (including death) or damage to property, or infringement or violation of any patent or other intellectual property right caused by the negligence or other wrongful acts or omissions of the indemnifying party, its employees and authorized agents during the performance of the Work, including any final monetary judgments, settlements, reasonable costs and reasonable attorneys' fees awarded therein. The party seeking indemnification shall: (a) provide the other party with prompt notice of the claim; (b) allow the indemnifying party to control the defense and settlement of the claim, provided, however, that the indemnifying party shall not agree to any injunctive relief or settlement that obligates the indemnified party to perform any obligation, make an admission of guilt, fault or culpability, or incur any expense, without such indemnified party's prior written consent, which shall not be unreasonably withheld, delayed or conditioned; (c) have the right to obtain its own counsel at its own expense; and (d) provide reasonable cooperation to the indemnifying party.
- 12. INDEPENDENT CONTRACTOR.** Pro Kleen is an independent contractor for all purposes, without express or implied authority to bind Purchaser by contract or otherwise. Neither Pro Kleen nor its employees, agents or subcontractors are agents or employees of Purchaser, and therefore are not entitled to any employee benefits of Purchaser.
- 13. ASSIGNMENT.** This order may not be transferred or assigned by operation of law or otherwise, without the prior express written consent of the party not initiating the assignment. Any transfer or assignment of rights, duties, or obligations here under without such consent shall be void; and, shall result in the collection of all fees, expenses, and/or charges associated with such transfer or assignment.
- 14. GOVERNING LAW.** All claims, actions or other disputes arising out of the Work or these Terms and Conditions will be controlled by the laws of the State of Ohio, United States of America. Any dispute arising hereunder shall be the exclusive jurisdiction of the Franklin County, Ohio courts and the parties hereby submit to the personal jurisdiction of such courts and waive any argument of forum non-conveniens.
- 15. FORCE MAJEURE.** Neither Pro Kleen nor Purchaser shall be liable for delay or default in due to Acts of God, accident, riot, strike, war (declared or otherwise), embargo or government interference.
- 16. HEADINGS.** The headings used throughout are for convenience only and will be disregarded for the purpose of construing and enforcing this agreement.
- 17. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and governmental regulation required by law to be inserted in these Terms and Conditions is deemed inserted and these Terms and Conditions will read and be enforced as though the same were so included in these Terms and Conditions. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, then, upon the application of either party, these Terms and Conditions shall be deemed to be amended to make such insertion or correction.
- 18. SAFETY.** Pro Kleen agrees to, at all times while performing Work, abide by and adhere to all safety policies, rules and regulations of Purchaser that have been communicated in writing to Pro Kleen by Purchaser.
- 19. NO WAIVER.** No delay or failure of either party in exercising any right hereunder and no partial or single exercise of any right hereunder or thereunder shall be deemed to constitute a waiver of that right or any other rights under these Terms and Conditions.

