

General Terms & Conditions



EFFECTIVE JANUARY 1, 2019

Revised 6-17-19

1. **Application.** These General Terms and Conditions of Sale (General Terms) apply to: (a) all proposals and quotations submitted by KAL Manufacturing Corporation (Seller); (b) all purchase orders received by Seller; and (c) all sales of goods and services sold by Seller, except as otherwise specifically provided in a document issued by Seller. Any services to be provided by Seller, whether or not they are part of a sale of goods (as separate units or included as part of an assembly), will be considered ancillary to a sale of goods, and the Unified Commercial Code (UCC) will apply to all goods and services to be provided by Seller (Goods).
2. **Acceptance of Purchase Order.** A written quotation issued by Seller is an offer to sell and not a binding agreement to produce Goods. Buyer will be deemed to have accepted the provisions of these General Terms and an Agreement will be formed by any of the following: (a) placing a purchase order with written confirmation of acceptance including agreed upon purchase order terms (b) failing to cancel a pending purchase order within 30 business days after receiving these General Terms by method of written quotation; (c) accepting delivery of all or any part of the Goods; (d) paying for all or any part of the Goods. All sales by Seller consist only of these General Terms and those in other documents which are referred to in these General Terms or are attached hereto or in a document provided or signed or issued by Seller and referencing the transaction (all of which constitute the Agreement). Seller objects to all terms proposed by Buyer.
3. **Integration and Modification.**
 - a. Revocation. The Agreement supersedes all previous quotations and agreements pertaining to the Goods. Delivery to Seller of Buyer's acceptance of Seller's quotation (according to its terms), Seller's actions in reliance on Buyer's written acceptance of a written quotation, or Buyer's receipt of the Goods, will constitute a binding contract under the terms of the Agreement.
 - b. Complete Integration. The Agreement is a final, complete and exclusive statement of the Agreement of Buyer and Seller. An order or an amendment submitted by Buyer in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to or inconsistent with these General Terms), may be accepted, approved or filled by Seller, but any resulting contract and the liabilities or obligations of Seller will be determined solely by the Agreement, and (unless Seller otherwise advises Buyer in writing) notice is given that Seller objects to any such terms or conditions in Buyer's purchase order or other document or communication. Seller will not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Buyer's terms or conditions.
 - c. Modification. SELLER IS WILLING TO NEGOTIATE WRITTEN CHANGES TO THESE GENERAL TERMS SIGNED BY SELLER, BUT SELLER RESERVES THE RIGHT TO MAKE AN ADJUSTMENT IN THE PRICE OF THE GOODS TO COVER SELLER'S ESTIMATED COST OF SUCH CHANGES. No modifications, limitations, waivers or discharge of the Agreement or any of its terms will bind Seller unless in a writing signed by Seller's authorized employee at its home office. Notwithstanding anything to the contrary in this Agreement, no modifications, limitation, waiver or discharge of any provision of the Agreement will affect Buyer's liabilities to Seller accrued prior thereto. Seller may correct unilaterally mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions. A course of performance, course of dealing, or custom in the trade will not modify or waive any right of Seller.
 - d. Parties. The Agreement is only for the benefit of Buyer and Seller, except all disclaimers and limitations applicable to Seller will be also for the benefit of Seller's affiliates, agents, employees, contractors, and suppliers. If any other provisions of the Agreement are determined to apply to third parties, all other provisions including limitations, waivers, and disclaimers also apply.

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e. Acknowledgments. Buyer and Seller acknowledge that: (i) they are merchants in respect to the Goods produced by Seller; (ii) they have had an opportunity to review the Agreement; and (iii) the provisions of the Agreement are reasonable when considered.

f. Directed Source Supplies. Buyer may direct Seller to obtain components or services from third parties (Directed Source Suppliers) for use in the provision of the Goods. Seller will not be responsible to Buyer for any warranty or other claims arising from Directed Source Supplies or from the failure of the third party to timely provide Directed Source Supplies. If a third party that provides Directed Source Supplies fails or refuses to provide services or goods, Seller will be able to assert Force Majeure under Section 19.

4. Prices, Payment and Risk of Loss.

a. Prices. Prices contained in individual written quotations or proposals are firm only for a period stated therein and otherwise for 90 days from the date of the quotation. After the firm price period, the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. Prices do not include taxes and Buyer must pay all applicable sales or other taxes levied with respect to Goods (and replacements) and the Agreement, unless exempt from such taxes. All prices are in United States dollars and must be paid in U.S. dollars at the location specified in Seller's invoice.

b. Risk of Loss and Title. The Agreement is for a shipment contract and, unless otherwise stated in writing signed by Seller, the Goods will be delivered F.O.B. Webster, NY. Risk of loss passes to Buyer upon tender of the Goods to a carrier and Buyer is responsible for selecting its preferred freight carriers and is responsible for their performance including but not limited to delays, damage and / or scheduling errors caused by Buyer's freight carrier. Seller's breach of the Agreement will not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Notwithstanding the transfer of the risk of loss, title to the Goods will remain with Seller until Buyer pays for the Goods in full.

c. Price Adjustments. If any delay in delivery beyond the date of delivery scheduled at the time of acceptance and entry of the order is requested or otherwise caused by Buyer, Seller will adjust the price under the provisions of this subsection. Buyer and Seller further agree that the current pricing is only valid for 90 days as of last valid quotation and that at the expiration of each 90-day period following agreement, Seller may unilaterally adjust and condition further supply on a new price, among other reasons, to cover Seller's increased cost of performance due to, among other circumstances: volume fluctuations and increases in the costs of labor, materials, production or transportation and change in specifications or directions or in the law or other conditions beyond Seller's reasonable control after the date of any quotation. If the price adjustment is based on an increase in cost of raw materials, the new price will include the difference between the raw material cost factored into the prior 90-day period pricing and the current raw material cost as determined by the Metal Market Index where applicable. If for any 90-day period the actual volumes are less than 80% of the volumes supporting and stated in Seller's quote, the price for the subsequent 90-day period will be adjusted as necessary to fully amortize Seller's investment over the estimate remaining production. Seller and Buyer will equally share, 50%/50%, all value-added or value-engineering or other savings that are the result of joint engineering efforts aimed at cost reduction whether these changes occur before or after the start of production. Prices for goods and tooling are valid only for volumes quoted, with the ability to provide additional volume of 15% for short-term surge requirements of not more than 30 days within any 365-day period, and any demand for additional volume beyond 30 days are subject to additional tooling charges or price adjustment.

d. Changes at Buyer's Request. Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, manufacturing, treating, coating, plating, material or process capability data, logistics requests including but not limited to Advanced Shipping Notices if Buyer requires with shipment, and other performance by Seller, required by changes requested by Buyer to the Goods, schedule or any other performance by Seller after the date of

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any quotation. Seller is not obligated to perform any such changes but will be compensated for them if Seller complies with such requested changes.

e. Shipping and Packaging. Except as otherwise provided in the Agreement, Seller will not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of the Agreement. If such charges are specifically included in the price, any increase in rates for such services becoming effective after the date the price is quoted to Buyer will be added to the price. All Goods will be packed for shipment by Seller in accordance with its standard practices. It is Buyer's responsibility whether Seller arranges shipping to determine whether additional packaging procedures and materials are appropriate for the shipment of Goods. Buyer will pay Seller for the additional procedures and materials. Buyer will pay Seller for additional handling charges for small, expedited or other shipments outside Seller's normal and ordinary course of business. As an example, requests for drop shipments must be in writing and an additional charge will apply.

f. Payment Terms. Unless Seller expressly agrees in writing: i) payment terms for all Goods produced for Buyer must be 1% 10 [1% discount on quoted price at quantity if paid in 10 days of shipment] + NET 30 days from date of shipment ii) payment terms for all engineering changes and Buyer's Property, including but not limited to fixtures, gauges, tooling and related property over \$20,000 in total per project will be 50% billable upon receipt of purchase order, 50% with Submission of PPAP. Anything less than \$20,000 will be billed 100% with submission of PPAP. All payments made after thirty (30) days from the date of the invoice shall be subject to a service charge of one and one-half (1.5%) per month based on the outstanding balance. Seller reserves the right to use any and all legal means of collection available under applicable law to collect any amount due, up to and including applying all costs incurred to secure any past due amounts to the buyer.

g. Export/Import Fees. All export and import permits and licenses and the payment of all export and import duties and customs fees will be the responsibility of Seller if Seller is obligated by the Agreement to deliver the Goods within the United States. All export and import duties, fees, permits, licenses, etc. for Goods to be delivered outside of the United States will be the responsibility of Buyer.

h. Invoices. Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer must pay all invoices 1% 10 NET 30 days after the date of shipment. Seller may change any payment term in the Agreement to Buyer on seven days' written notice.

i. Installments/Releases. All purchase orders must have an agreed upon delivery and release schedule where applicable, typically based on annual consumption. Seller will deliver Goods in these installments, each of which is to be considered a separate sale, and Buyer must pay timely the price for each installment which is delivered. Failure to pay for an installment within the time for payment is a material anticipatory breach of other installments by Buyer. Standard delivery terms are defined below and may not be adjusted unless agreed upon in advance of accepting a purchase order by the Seller:

Discreet Orders: \$2,000 or less in total contract value with all components delivered within quoted lead time of order confirmation. Buyer accepts 100% liability.

6 Month Blanket Orders: \$2,001 - \$5,000 in total contract value with all components delivered within 6 months of order confirmation. Minimum invoice value on any release to be no less than \$500. Buyer accepts 100% liability.

12 Month Blanket Orders: \$5,001 and higher in total contract value with all components delivered within 12 months of order confirmation. Release schedule must be agreed upon before order confirmation. Minimum invoice value on any release to be no less than \$500. Buyer accepts 100% liability

j. Inventory Charge. All amounts not paid to Seller when due will incur an Inventory charge of 1.5% per month to the extent allowed by law and otherwise at the highest written contract rate allowed by law.

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- k. Buyer's Cooperation. All amounts due upon shipment or other event which requires the action or cooperation of Buyer. If Buyer fails to supply timely response, items subject to such response will become due upon such failure.
- l. Right of Offset. Seller may offset or recoup any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller. Buyer waives any right of offset or recoupment and will pay all amounts owed to Seller when due regardless of any claim of Buyer regarding warranties or other issues arising under contract, tort, statute or otherwise. Payment of such amounts under written protest will not constitute a waiver by Buyer of its claims.
- m. Allocation of Payments. Seller may allocate payments from Buyer among outstanding invoices in Seller's discretion.
- n. Exchange Rate. Goods ordered under the Agreement which are procured by Seller from sources outside the United States are predicated on the rate of exchange in force at the time of the quotation (or Order if there is no quotation). If the rate of exchange between the United States dollar and the currency of the country from which the Goods are procured by Seller varies between the date of the quotation (or Order if there is no quotation) and delivery of the Goods, the price of the Goods will be increased or decreased accordingly to compensate Seller for such variation in the rate of exchange.
- o. First Articles. First Articles of Goods and test reports will be provided by Seller only upon Seller's consent and at prices established by Seller or written agreement with Buyer.
5. **Manufacturing.** Buyer acknowledges and agrees that Seller may elect to manufacture Goods for supply under this Agreement or to procure such goods from third-party subcontractors or suppliers, and that sources for such goods may include countries outside the United States. To the extent that any requirements imposed by a governmental authority may limit or preclude the acceptance of products manufactured or sourced outside the United States (or from particular countries), or impose additional duties or other cost on products from such country of manufacture, Seller will have the option to shift the source of manufacture or supply to claim a Force Majeure under paragraph 19 and terminate the Agreement without liability to Seller.
6. **Delivery.**
- a. Shipping Dates. Shipping dates are estimates based on Seller's present engineering and manufacturing capacity and scheduling capabilities and may be revised by Seller upon receipt or scheduling of Buyer's order. All shipping dates are approximate and will be computed from the date of entry of the order on Seller's books. Timely delivery is dependent on Buyer providing Seller with the minimum lead time quoted by Seller and Seller's prompt receipt from Buyer of a written purchase order or acceptance, down payment and other conditions as specified in the Agreement, and of all drawings, information and approvals convenient or necessary to provide the Goods in the Agreement.
- b. Method and Cost of Shipment. Seller will deliver the Goods by tendering the Goods on its docks for placement in the possession of a carrier and, without liability, will make such contract for their transportation as Seller decides having regard for the nature of the Goods and other circumstances. Seller will generally follow Buyer's shipping instructions but may make reasonable changes thereto without liability and at Buyer's cost. On Buyer's request, Seller will obtain and send to Buyer documents necessary to enable Buyer to obtain insurance. Seller is not responsible to prepay transportation or insurance costs. Buyer must pay all handling and other charges incidental to transportation. Buyer must pay all expedite costs and fees including those that result from Buyer's failure to provide Seller the quoted lead time unless delay was exclusively due to the fault of Seller in which case Seller will be responsible for the incremental difference between the normal delivery costs and expedited delivery costs. Buyer is responsible for making any claim against the carrier and other handlers of the Goods after delivery to Buyer as provided above.

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c. Delivery Terms. Standard delivery terms are defined below and may not be adjusted unless agreed upon in advance of accepting a purchase order by the Seller:

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6 Month Blanket Orders: \$2,001 - \$5,000 in total contract value with all components delivered within 6 months of order confirmation. Minimum invoice value on any release to be no less than \$500. Buyer accepts 100% liability.

12 Month Blanket Orders: \$5,001 and higher in total contract value with all components delivered within 12 months of order confirmation. Release schedule must be agreed upon before order confirmation. Minimum invoice value on any release to be no less than \$500. Buyer accepts 100% liability

7. Delay of Shipment or Performance Excused for Various Reasons.

a. Delayed Shipment. If shipment of any Goods or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Goods at the place of manufacture or elsewhere at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for Goods is due and payable 1% NET 10 and NET 30 days after Buyer is notified that the Goods are ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Goods, Buyer must accept shipment immediately.

b. Delayed or Failed Delivery. All inspection, delivery and other dates for Seller's performance are estimates only. In addition, Seller will not be in default because of its delay or failure to deliver or perform under the Agreement resulting, in whole or in part, from: any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order; (ii) shortages of raw materials or labor; (iii) the lack of usual means of transportation, fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or performance; (iv) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise; (v) failure of Seller's suppliers to perform including third party's failure to provide Directed Source Supplies. If one or more deliveries hereunder is delayed by reason of any one or more of such occurrences for a period of 30 days, Seller may, at its option, terminate the Agreement as to the undelivered Goods or waive such delay and establish a new delivery schedule.

c. Effect. This Section will be effective even as to events described in Subsections A and B which exist on the date of a quotation or of contract formation.

d. Storage. If Buyer requests storage of Goods prior to final delivery, Seller will attempt to provide or arrange such storage, but a reasonable charge for storage as computed by Seller plus all expenditures incurred for space, insurance, and handling will be charged to Buyer. Invoices for Products stored at Buyer's request will be provided at the beginning of the storage period and periodically thereafter, and payment will be due 1% 10 NET 30 days from the date of invoice.

8. Inspection, Testing and Rejection.

a. Testing. If the Agreement expressly provides for Buyer's inspection and/or acceptance of the Goods, Seller's standard test procedures conducted by Seller's representative will be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. On request, Seller will quote to Buyer additional charges required to conduct any additional procedures requested by Buyer which may be acceptable to Seller.

b. Rejection. All manuals, drawings, specifications, technical documentation, samples, prototypes and Goods will be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within seven (7) days of receipt or other reasonable time established by Seller. Buyer will have seven (7) days after receipt of the item to

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inspect and either accept or provide notice of objection and/or rejection. If it is rejected, notice must be given to Seller and written request for Return Material Authorization (RMA) so that it will arrive no later than 10 days after receipt of the item by Buyer. Failure to so act will constitute an irrevocable acceptance by Buyer of the item. Any objection and/or rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED. Buyer may reject the Goods only for material non-conformities and all non-material non-conformities will be resolved under the express warranty. If Buyer rejects any tender of the Goods and if requested by Seller, Buyer must return them to Seller, express, collect, within three (3) days after such request. A failure to so return constitutes an irrevocable acceptance. No attempted revocation of acceptance will be effective, and Buyer will be limited to any available remedies specifically provided in the Agreement. There will be no limitation on the period in which Seller may cure any non-conformity or breach, provided it continues to make reasonable efforts to cure.

c. Inspectors. If the Agreement requires, or Seller requests in writing, inspection or testing prior to shipment, and upon notification by Seller that the Goods are ready for inspection or testing, Buyer will provide at the place of manufacture, at its own expense, one or more qualified and authorized employees to inspect and/or test the Goods, check the Goods for general compliance with the Agreement, and authorize shipment. If Buyer fails to do so within seven (7) days, then Seller may, in its own discretion, determine that Buyer has waived the right of inspection, testing and/or acceptance prior to shipment and ship the Goods. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and/or testing and are otherwise covered by Seller's warranty, will be at Buyer's expense.

d. Testing Facilities. Buyer will provide, at its cost and risk of loss, all materials, fixtures, tooling and other items necessary for any inspection and/or testing required by the Agreement or requested by Seller. If Buyer fails to supply such items within the time required, Seller may supply them at Buyer's expense or test by such means as available at the place of manufacturer. Equipment, parts and materials furnished by Buyer for testing and/or inspection will be returned to Buyer at Buyer's cost, unless Buyer authorizes their disposal. If the Goods include the necessary fixtures and tooling, the inspection and/or testing at the place of manufacture may be performed on production or other equipment like that identified to the Agreement.

e. Delivery Shortages. Any claim by Buyer for shortages in any delivery must be in writing with satisfactory written evidence delivered to Seller within seven (7) days of receipt.

f. Expenses. Any expense incurred by Buyer in the inspection or testing of the Goods will be paid by Buyer, whether the Goods have been rejected as defective or non-conforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or non-conformity.

9. **Patent Warranties**. Seller disclaims any implied warranty of non-infringement. If the designs or specifications are furnished by Buyer, Buyer warrants that they do not infringe on any patent or other intellectual property right and must indemnify and hold harmless Seller from any claims of infringement against Seller relating to their use by Seller.

10. Remedies and Limitation of Seller's Liability.

a. General. Defective or non-conforming Goods or parts thereof discovered during the express warranty period will be reworked or replaced by Seller without any additional charge and shipped to Buyer, FOB Seller's manufacturing facility subject to the terms hereof. The warranty obligation of Seller is limited to the rework or replacement at Seller's manufacturing facility of any part of the Goods which Buyer must, exercising reasonable judgment and within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller will determine upon examination to be defective or not in conformity with the express warranties contained in these General Terms. Goods cannot be deemed defective or non-conforming if Seller cannot duplicate the alleged failure. If the alleged failure can be duplicated by Seller, Seller will discuss the potential causes with Buyer, and then determine whether the failure is due to a non-conformity or

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defect attributable to Seller. In lieu of rework or replacement, if Seller elects, Seller may, upon return of such Goods and making a determination of nonconformity or defect, keep the Goods and refund the purchase price. Seller may provide such repairs itself or through its third-party contractors. Buyer's remedies are limited (even in the event of Seller's default of its warranty obligations or a failure of an item to meet its intended purpose) exclusively to those provided in this Section. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOSS PROFITS OR REVENUES; INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING, PREMISES, OR WORK-IN-PROCESS; COST OF CAPITAL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES, PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability statutes, or otherwise, except as specifically provided by the UCC as modified and limited in these General Terms. The replacement or repair of Goods by Seller does not give rise to any new warranty, and the warranty period provided for in these General Terms will not be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date the repaired or replacement Goods are delivered to Buyer.

b. Buyer's Obligations. Buyer must contact Seller to request warranty coverage, a return authorization number, and other instructions relating to the return of Goods. If requested by Seller, Buyer must issue a new purchase order or amendment to Seller for replacement parts, subject to Seller issuing a credit memo if Buyer's claim for warranty coverage is approved. Buyer must comply with Seller's return instructions (including return of the Goods) within 30 days or the claim will be deemed conclusively to have been abandoned. Buyer is responsible for properly tagging, identifying and packing returned Goods. Goods returned without compliance with the above procedures must be returned to the sender at sender's cost.

c. Defense and Indemnification. Buyer must defend and indemnify Seller from all liability for claims, damages, losses and expenses incurred: (i) as a result of the use or disclosure of Seller's confidential or proprietary information (except in the performance of the Agreement) by Buyer or its contractors; and (ii) as a result of the advice, direction, information and/or specifications furnished by Seller to, and relied on by, Buyer's contractors to the extent the liability exceeds any liability as limited by the Agreement had the advice, direction, information and/or specifications been furnished to, and relied on by, Buyer.

d. Scope of Liability. Under no circumstance will Seller's liability exceed Buyer's uninsured loss. Buyer waives any right of subrogation. Buyer waives any right of indemnity or subrogation as to third-party claims, in excess of any applicable insurance carried by Seller.

e. Substantial Compliance. Seller will not be liable for any damages for breach of any provision with which it has substantially complied.

11. Indemnification.

a. Third Parties. Buyer will indemnify Seller from any and all third-party claims, damages and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise arising out of the production, use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller. Seller is under no obligation to indemnify Buyer for any reason.

12. Proprietary Information.

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- a. Buyer's Rights to Confidentiality. Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.
- b. Seller's Rights to Confidentiality. All proposals, quotes, plans and other information furnished by Seller, in any form, during bidding, negotiating and performing the Agreement, are confidential and the property of Seller, whether or not marked "Confidential", and may not be shown or disclosed to any other bidder, and may not be shown or disclosed to any other third party or used by Buyer except as may be necessary for the selection or use of the Goods and Seller provides Buyer with written consent.
- c. Patentable Features. Any design, invention or other information developed by Seller in the performance of the Agreement will remain the property of Seller, whether or not Seller charges for design, research, development, testing, or similar services. Any patentable features developed by Seller will be the property of Seller and Seller will be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the Agreement, except as provided in Subsection A.
- d. Drawings and Calculations. Seller is not obligated to furnish detailed or shop working drawings, engineering calculations, computer programs, or other information for any Goods or part thereof.
- e. Buyer's Obligations. Buyer must treat as confidential any business proposal from Seller and all technology made available, directly or indirectly to Buyer by Seller and by Seller's licensors, including but not limited to drawings, schematics, specifications, bills of material, quality test results, analysis, recommendations, prototypes, and designs, and Buyer may use such proposal and technology only to evaluate its business relationship with Seller and to enable Buyer to perform under the Agreement. Buyer may not disclose, or authorize or instruct Seller to disclose, any confidential or proprietary information of Seller to any third party that is not bound by contract to at least the same duty of confidentiality to Seller as is Buyer. In addition, only those employees and contractors of Buyer having a need-to-know and bound by contract by the same confidentiality provisions as Buyer may be given access to such technology. Buyer must maintain, for Seller's inspection, written records which must include the names and address of such employees and contractors granted such access. Buyer will indemnify Seller from all expenses and damages related to the improper use or disclosure by Buyer or its employees and contractors. Business proposals and technology of Seller may be protected by patent, copyright, trademark and other law. No license or other right to business proposals or technology is granted to Buyer.

13. **Intellectual Property**. Any Intellectual Property owned or licensed by Seller and used by Seller in connection with the performance of its obligations will remain the exclusive property of Seller and its licensors. Nothing in this Agreement will be deemed to grant Buyer any license or any other rights in such Intellectual Property. The term "Intellectual Property" includes without limitation all of the following: (i) inventions, discoveries, patents, patent applications and all related continuations, divisional, reissue, utility model, design and process patents, applications and registrations thereof, certificates of invention; (ii) works, copyrights, registrations and application for registration thereof; (iii) computer software programs, data and documentation; (iv) trade secrets, confidential information, know-how, techniques, designs, prototypes, enhancements, improvements, work-in progress, research and development information; and (v) all other proprietary rights relating to the foregoing.

14. **Buyer's Property**. "Buyer's Property" means tools, jigs, dies, gauges, fixtures, molds and patterns owned and fully paid for by Buyer and/or provided to Seller for the purposes of manufacturing Goods or performing services for Seller. If Buyer's Property wears out under normal use, Buyer must supply to Seller new or repaired Buyer's Property. Seller will release to Buyer, Buyer's Property, provided that: (i) Seller has fully paid Buyer for all Goods produced by Buyer's Property and delivered to Buyer (ii) Seller has fully paid for all Goods, raw materials and work in process produced and/or associated with Buyer's Property and falling within Firm (iii) Buyer's Property is not subject to any lien asserted by Seller or any third party

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and (iv) Seller releases Buyer from any obligation for further production of the Goods that Seller produced with Buyer's Property. If (i)-(iv) are satisfied, and upon written request to release by Buyer, Seller, within 30 days of receipt of Buyer's request, will make Buyer's Property available for pick up by Buyer. Buyer is responsible for all costs associated with removing and transporting Buyer's Property from Seller's premises including but not limited to freight and packaging. Under no circumstances is Seller responsible for any damage that occurs to Buyer's Property. If Buyer, does not remove Buyer's Property from Seller's premises within 20 days after Seller gives notice to Buyer that Buyer's Property is ready for removal, Buyer's Property becomes the property of Seller and Seller may dispose of Buyer's Property as it sees fit. Buyer must insure Buyer's Property and other property delivered to Seller against all risks and liability and waives subrogation in the event of loss of or damage to such property or personal injury arising from the use, transportation or storage of such property.

15. **Solvency of Buyer.** Buyer represents that it is solvent, able to pay the price for the Goods, and that all financial and business information given to Seller is correct. If Buyer becomes insolvent before delivery of the Goods, it must notify Seller. Buyer's acceptance of delivery will be a reaffirmation of Buyer's solvency, and that there has not been a material adverse change to Buyer's financial condition.

a. Forecast, Finished Goods, and Raw Material. Each month, Buyer will provide Seller with a rolling forecast matching the Seller's longest quote lead time of its anticipated purchases of the Goods (Forecast), which will take into consideration Buyer's existing inventory. Buyer authorizes Seller to rely on these Forecasts and agrees that: (i) the first 2 months of each Forecast are Firm with respect to finished Goods; and (ii) the first 4 months of each Forecast are Firm with respect to raw material. For clarity, "Firm" means that Buyer is committed to purchasing from Seller.

16. **Cancellation, Termination.** If Buyer cancels or terminates any Forecast and / or this Agreement for any reason, Buyer must immediately purchase all finished Goods, raw materials, and work in process that were purchased to produce, or fall within, the Firm quantities under paragraph 16 above. With respect to the work in process, Buyer is obligated to pay the then current purchase price. Buyer is also obligated to immediately reimburse Seller the cost of manufacture and liquidated damages (including labor, engineering, unamortized development cost, equipment time and overhead) computed using Seller's standard internal costing procedures, plus 15% of the sale price of the Goods. BUYER AND SELLER ACKNOWLEDGE THE GREAT DIFFICULTY OF PROVING DAMAGES FOR THE CANCELLATION OF PRODUCTS SUCH AS THE GOODS, AND THE REASONABLENESS OF THIS LIQUIDATED DAMAGES PROVISION.

17. **Consequential, Incidental, and Other Damages.** BUYER AND THIRD PARTIES ARE NOT ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, AS DEFINED IN THE UCC OR OTHERWISE. This limitation will be enforced regardless of whether Seller has defaulted in its warranty or other obligations or the limited warranty is held to fail of its essential purpose. Any legal inability to limit or restrict the right of Buyer or a third party to such damages will not affect the right of Seller to indemnification hereunder, and under no circumstance will Buyer recover more than the purchase price. UNDER NO CIRCUMSTANCES WILL SELLER'S LIABILITY FOR CLAIMS FOR NON-DELIVERY OR OTHER NON-PERFORMANCE, DEFECTIVE PERFORMANCE, NON-CONFORMING GOODS, DEFECTIVE GOODS OR OTHERWISE EXCEED THE AMOUNT RECEIVED BY SELLER FOR THE PERFORMANCE OR SHIPMENT WHICH CONTAINED THE NON-CONFORMING GOODS, DEFECTIVE GOODS OR SUCH OTHER EVENT GIVING RISE TO THE CLAIM.

18. **Force Majeure.** Seller will not be responsible for any delay or failure in any performance due, without limitation, to acts of God, war, warlike conditions, blockade, embargoes, riots, governmental restriction, labor disturbances, unavailability of anticipated usual means of supplies, transportation or loading facilities, wrecks, epidemics, quarantine, fire, flood, earthquake, explosion, any unforeseen change in circumstances, or any other causes beyond its reasonable control.

19. **Limitations of Actions.** A proceeding by Buyer for breach of the Agreement or any other right against Seller arising from or in connection with the Agreement cannot be filed nor maintained by Buyer unless: (i) it is commenced within one year after the cause of action has accrued; (ii) Buyer has given timely written notice to Seller of the details of its claim as provided in

General Terms & Conditions



these General Terms; and (iii) Buyer pays all amounts due to Seller or deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action for breach of warranty or any other provision of the Agreement accrues no later than shipment of the Goods to Buyer whether or not installation or other post shipment services are required by the Agreement.