



KS TOOLING, INC.

STANDARD TERMS AND CONDITIONS OF PURCHASE

- 1. Acceptance of Terms:** This document creates a binding legal agreement between K S Tooling, Inc. ("KS") and the party contracting to provide goods hereunder ("Seller"). Seller agrees to be bound by and to comply with all terms set forth herein and in the purchase order to which these terms are attached and are expressly incorporated by reference, together with any written amendments, supplements, specifications and other documents referred to herein or therein. Acknowledgement of this Purchase Order by any means, including without limitation, by beginning performance of the work or supply of the goods called for by this Purchase Order, shall be deemed acceptance of this Purchase Order. If Seller allows ten (10) days to lapse from the time the Purchase Order is received by Seller, neither accepting the order in the manner indicated above nor giving KS written notice of rejection of the order, then the Purchase Order will be deemed accepted by Seller. Any attempted confirmation or acknowledgement by Seller that contains terms inconsistent with or in addition to the terms of this Purchase Order is not binding unless specifically accepted by KS in writing. This Purchase Order expressly limits acceptance to the terms of this offer and Buyer hereby objects to and rejects any different or additional terms contained in any of Buyer's previous proposal(s) or response(s) to this purchase order.
- 2. Prices and Payments:** All pricing shall be set forth in detail in the Purchase Order and the prices specified in the Purchase Order are firm and not subject to any additional charges for packing or preparation for shipment or because of increased costs of operation or because of any taxes or excises levied on processors, manufacturers and wholesalers, or otherwise. The Purchase Order shall not, without written authorization from Buyer, be filled at higher prices than specified therein. Any price reduction made in the goods described in the Purchase Order prior to the delivery of such goods shall be applicable to the Purchase Order. Any state or local sales, use, excise and/or privilege taxes, if applicable, will not be included in Seller's price but will be separately identified on Seller's invoice. Unless otherwise stated on the face of this Purchase Order, payment terms are net due ninety (90) days from the later of the required date identified on the Purchase Order or the received date of the goods. KS shall be entitled to reject Seller's invoice if it fails to include KS's Purchase Order number or is otherwise inaccurate, and any resulting delay in payment shall be Seller's responsibility.
- 3. Warranties:** Seller covenants, represents and warrants to KS, in addition to all warranties expressed or implied at law, that the goods and the use, design, construction, assembly, production, shipment, sale, packaging, labeling, instructions and warning (or lack thereof) and other printed matter furnished or authorized by Seller shall be new and of merchantable quality, free from defects in design, workmanship and/or materials, including without limitation such defects as could create a risk of injury or damage to persons or property. The above warranties shall apply for twenty-four (24) months from delivery of the goods, or such longer period of time as customarily provided by Seller or as provided under Uniform Commercial Code, as extended for delays such as those due to non-conforming goods. If any of the goods are found to be defective or otherwise not in conformity with the warranties in this Section during the warranty period, then, KS, in addition to any other rights, remedies and choices it may have by law, contract or at equity, and in addition to seeking recovery of any and all damages and costs emanating therefrom, at its option and sole discretion and at Seller's expense may: (a) require Seller to replace nonconforming goods with goods and/or services that conform to all requirements of this Purchase Order; (b) take such actions as may be required to cure all defects and/or bring the goods into conformity with all requirements of this Purchase Order, in which event all related costs and expenses (including, but not limited to, material, labor and handling costs) and other reasonable charges shall be for Seller's account; and/or (c) reject and return all or any portion of such goods. Any repaired or replaced goods shall carry warranties on the same terms as set forth above, with the warranty period being the greater of the original unexpired warranty or twenty-four (24) months after repair and replacement.
- 4. Changes:** KS may at any time make changes in written, electronic or facsimile form to any Purchase Order, including changes in the drawings or specifications, methods of shipment, warranties, packing or time or place of delivery at any time. Any Seller claim for adjustment will be deemed waived unless asserted within ten (10) days from Seller's receipt of the change or suspension notification, and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change.

5. **Delivery and Passage of Title:** Time is of the essence of this Purchase Order. KS shall be entitled to recover damages that it incurs as a result of Seller's failure to perform as scheduled. Unless expressly stated to the contrary, KS's remedies are cumulative and shall be entitled to pursue any and all remedies available at law or equity. Time is hereby made of the essence of the Purchase Order. If delivery of goods is not completed by the date set forth in the Purchase Order, KS reserves the right, without liability and in addition to its other rights and remedies at law, in equity or under the terms of the Purchase Order, to purchase elsewhere and hold Seller liable for any additional loss, cost, damage or expense incurred thereby. Seller shall pay any loss, cost, damage or expense resulting from the untimely receipt of the goods ordered. Seller shall notify KS immediately if it is unable to ship timely. KS shall have the right to refuse any goods with untimely delivery and to cancel the balance of the Purchase Order for any part of the goods due after the untimely delivery of any installments. By accepting the untimely delivery of any installment, KS shall not be bound to accept future shipments nor be deprived of its right to return goods already accepted nor to claim damages for untimely delivery. If KS accepts any advance shipment (other than required by it) under any Purchase Order, payment terms on such shipment shall be computed from the required shipping date.

6. **Order Termination Without Cause:** In addition to KS's right to terminate a Purchase Order for cause as provided below, KS may terminate a Purchase Order, in whole or in part, at any time upon notice to Seller. On receipt by Seller of such notice, Seller shall, to the extent specified therein, stop work and the placement of work with subcontractors, terminate work under subcontracts outstanding and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. Any termination by KS whether for cause or otherwise, shall be without prejudice to any claims for damages or other rights of KS against Seller and Seller shall continue performance of the Purchase Order to the extent not terminated.

7. **Right to Refuse Goods:** Without limiting any other right of KS herein, KS shall have the right to reject and refuse goods that are not in strict accordance with the terms of the Purchase Order, the specifications or industry standard, or which are different in quality or quantity from that ordered, or which are shipped other than as specified under the Purchase Order or which are believed by KS to violate a third party's Proprietary Rights or is alleged to violate a third party's Proprietary Rights. KS may, at its sole discretion, either return rejected goods or hold same at Seller's risk and expense and may, in either event, charge the Seller with the cost of transportation, shipping, unpacking, examining, repacking, storing, reshipping and other like expenses. If Seller fails to accept goods returned by KS, then KS shall have the right to dispose of such goods by any means. If within thirty-six (36) days after a request by KS for direction regarding disposition of rejected goods, Seller does not respond to KS, then KS shall have the right to dispose of the goods by any means. Acceptance of any prior shipments contrary to the Purchase Order shall not be considered a waiver of KS's right to return any or all of the goods and receive full credit therefore. Authorization for substitution of style, color, size, quantity or other departure from the terms of the Purchase Order, is permitted only upon the written, signed and dated consent of KS. Any claims made by KS for defective goods, shortages, returns, damages or other claim of set off asserted as a result of Seller's failure to comply with this Purchase Order will be charged back to Seller and the amount thereof deducted from payments to be made to Seller or, at KS's option, will be promptly refunded to KS.

8. **Right to Reject and Return Goods:** Without limiting any other right of KS herein, KS may at any time after delivery of the goods (and whether or not the same have been accepted by KS) reject and return all or part of the goods if any part is found to be in a damaged or defective condition, if believed by KS to violate a third party's Proprietary Rights, or if alleged to violate a third party's Proprietary Rights. Seller shall refund to KS in full the price paid by KS for such returned goods. Any goods so returned shall be at Seller's risk, expense and Seller shall be responsible for all freight and handling charges.

9. **Intellectual Property Indemnification:** Seller shall indemnify, defend and hold KS harmless from all costs and expenses related to any suit, claim or proceeding brought against KS or its customers based on a claim that any article or apparatus, or any part thereof constitutes goods or services furnished under this Purchase Order, as well as any device or process necessarily resulting from the use thereof, constitutes an infringement of any patent, copyright, trademark, trade secret or other intellectual property right of any third party. KS shall notify Seller promptly of any such suit, claim or proceeding and give Seller authority, information, and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein.

10. **Governing Law and Forum:** All questions relating to the construction, validity, interpretation and application of the contract arising out of KS's acceptance of Buyer's order and the construction, validity, interpretation and application of these Standard Terms and Conditions of Sale shall be governed and construed under the laws of the Commonwealth of Pennsylvania, excluding its conflicts of laws provisions. KS and Buyer expressly disclaim any applicability of the United Nations Convention on the International Sale of Goods to the order. Any dispute arising from the sale of goods by KS to Buyer shall be initiated only in the Court of Common Pleas of York County, Pennsylvania, U.S.A. or in the Federal District Court for the Middle District of Pennsylvania.

11. **Entire Agreement:** All prior representations, conversation or preliminary negotiations shall be deemed to be merged into the contract formed by KS's acceptance of Buyer's order and no waiver, alteration or modification of any of the provisions hereof shall be binding unless in writing and approved by KS at its main office.