



KS TOOLING, INC.

STANDARD TERMS AND CONDITIONS OF SALE

These terms and conditions govern the sale of Products by K S Tooling, Inc. ("KS"). These terms and conditions ("Agreement") take precedence over Buyer's supplemental or conflicting terms and conditions to which notice of objection is hereby given. Neither KS's commencement of performance or delivery shall be deemed or construed as acceptance of Buyer's supplemental or conflicting terms and conditions. KS's failure to object to conflicting or additional terms will not change or add to the terms of this agreement. Buyer's acceptance of the Products from KS shall be deemed to constitute acceptance of the terms and conditions contained herein.

1. **Orders:** All orders placed by Buyer are subject to acceptance by KS. Orders may not be cancelled or rescheduled without Seller's written consent. All orders must identify the products, unit quantities, part numbers, applicable prices and requested delivery dates of the Products being purchased.
2. **Prices:** The prices stated herein are based upon current costs and are firm for thirty (30) days. The prices of all shipments scheduled for delivery more than six (6) months beyond the date of a purchase order based on these prices may be increased upon thirty (30) days notice to reflect the higher costs due to increases in wage rates and material prices.
3. **Delivery Point:** All shipments shall be made to carrier F.O.B. York, PA, and risk of loss or damage to, or destruction of, the goods from and after their delivery to the carrier shall be with Buyer unless expressly provided herein to the contrary.
4. **Warranty:** KS warrants only that all goods manufactured by KS shall be free from defects in material and workmanship. However, this warranty shall be limited to goods found to be defective within a period of three (3) months from initial use or six (6) months from the date of shipment, whichever expires first. This warranty shall not apply to any goods delivered hereunder which have been damaged or subjected to alteration or negligible treatment after delivery or any defects which are due to artwork or drawings furnished by Buyer. Also, unless otherwise specifically stated, the warranty does not extend to the electrical performance of any assemblies or subassemblies to which the goods furnished hereunder are affixed but is restricted to the electrical continuity of such goods. KS's only obligation for breach of this warranty shall be the repair or replacement without charge, or any goods, or part thereof, which within such three (3) month period is proven to KS's satisfaction to have been defective, provided that: (1) Buyer shall have notified KS of the defect within such three (3) month period; and, (2) KS shall have the option of requiring the return, at Buyer's expense, of the defective material or goods to establish the claim; provided, however, that KS will bear any transportation costs incurred in repairing or replacing any goods which are shown to be defective during the warranty period. The cost of any repairs made by KS to goods no longer covered by this warranty shall be borne by Buyer. KS shall in no event be liable for Buyer's manufacturing costs, lost profits, good will or any other special, consequential, incidental or other damages resulting from a breach of the foregoing warranty. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHICH EXTEND BEYOND THE WARRANTY SET FORTH HEREIN OR WHICH EXTEND BEYOND THE DESCRIPTION OF THE GOODS CONTAINED HEREIN.
5. **Delivery Delay:** Scheduled shipping dates are approximate and are subject to prompt receipt from Buyer of all information necessary to design and manufacture the products. Time is not of the essence in the sale contemplated by the contract arising out of acceptance of Buyer's order and KS shall be entitled to a reasonable period of grace in the event of any delay in delivery beyond the scheduled shipping date. KS shall in no event be liable for any special, indirect, or consequential damages arising from any delay in delivery, irrespective of the reason therefor. KS shall in no event be liable for any damages arising from delay in design, manufacture, shipment or delivery of any goods hereunder if such delay is due to a cause beyond the reasonable control of KS. Such causes shall include, but not be limited to, outbreak of war, governmental regulations or restrictions, demands of the United States or any governmental subdivisions, restraining orders or decrees of any judge or court of competent jurisdiction, fires, strikes, floods, lockouts, labor disputes slowing down production, epidemics, accidents, delays in routing, shortages in fuel, raw material or transportation facilities, and default of suppliers. The happening of any contingency beyond KS's

reasonable control shall not constitute cause for cancellation of the order but shall extend KS's time to deliver for a period equal to the duration of such contingency.

6. **Price Adjustment:** Inspection of any material or parts at KS's facilities, whether by purchaser or by any governmental entity, will be just cause for a price increase in the goods described herein.

7. **Payment:** Terms of payment are net thirty (30) days on each shipment invoiced, unless otherwise expressly provided herein. Notwithstanding any specified payment terms, KS may require payment in advance before making any shipment if Buyer's credit shall at any time, in the sole judgment of KS, become impaired. The total contract price shall be immediately due and payable, and KS may cancel the unperformed portion of this contract upon Buyer's failure to make any payment when due. In the event KS elects to cancel, any increase in KS's per unit cost of the goods already delivered or then enroute to Buyer shall be payable by Buyer.

8. **Cancellation:** Buyer may cancel its order only upon written notice to KS and upon payment of reasonable cancellation charges, which will take into account any expenses incurred by and commitments made by KS in reliance upon such order. The cancellation charge for all cancelled orders respecting standard equipment shall be at least ten percent (10%) of the purchase price.

9. **Buyer's Specifications:** Buyer will indemnify, protect and hold harmless KS against all suits, and from all damages, claims, demands, costs and expenses, including attorneys' fees, for actual or alleged infringement of any letters patent arising out of design or manufacture by KS in accordance with special specification by Buyer.

10. **Taxes:** The prices of the goods do not include sales, use, excise or other similar taxes. Consequently, in addition to the prices quoted, the amount of any present or future sales, use, excise or other similar tax applicable to the sale of the materials hereunder shall be borne and paid by Buyer, or in lieu thereof, Buyer shall provide KS with a tax exemption certificate acceptable to the taxing authorities involved.

11. **Consequential Damages; Limitation of Liability:** KS WILL NOT BE LIABLE 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 KS's liability exceed the amount paid to KS by Buyer for the specific goods giving rise to such liability. Buyer agrees to indemnify and hold KS harmless from and against all liabilities, claims and demands of third parties of any kind relating to the goods and their use arising after shipment of the goods.

11. **Assignment:** No assignment of this contract shall be valid or binding upon KS unless such assignment shall be in writing and duly approved by KS by endorsement thereon or consent thereto.

12. **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.

13. **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.