

GENERAL TERMS AND CONDITIONS OF SALE

1. **Sale of Products/Scope.** The sale of products or services (collectively, “**Products**”) from Kauffman Engineering, LLC, its subsidiaries and divisions and any entity controlling, controlled by, or under common control with it (collectively, “**Seller**”) to Customer, its subsidiaries and divisions, and any entity controlling, controlled by, or under common control with it (collectively, “**Customer**”) will be governed by these general terms and conditions of sale (the “**Terms**”). The Terms apply to, whether written or oral, all proposals and quotations submitted by Seller, to all purchase orders received by Seller, to all Products and services sold and/or provided by Seller, and to all samples provided by Seller to Customer, except as specifically provided in a document signed by Seller, and between Seller and Customer. The terms and conditions of any sale resulting herefrom consists only of these Terms and those in other documents which are referred to herein or are attached hereto or in a document subsequently signed by Customer (all of which constitute an “**Agreement**”). The Terms expressly supersede and exclude the application of Customer’s general terms of purchase as well as any documents, quotations, or any other agreements, whether in writing or oral, issued previously, now or in the future by Customer in relation to the Products, unless specifically agreed upon in writing by Seller. No course of dealing or usage of trade is applicable unless expressly incorporated in the Terms. Any clerical error may be corrected by Seller. Customer’s written acknowledgment, issuance of a purchase order, acceptance of an offer of sale by Seller, delivery of Products or payment for the Products, whichever occurs first, is acceptance of these Terms. Any proposal for additional or different terms or any attempt by Customer to vary in any degree any of the Terms is rejected. All such proposals are considered a material alteration of the Terms, and the additional and different terms will not become a part of the contract between the Parties.

2. **Price/Payment.**

- (A) The purchase price for the Products will be the price for the Products in effect at the time of shipment, unless otherwise agreed upon in writing by the Parties. Seller may change prices without notice. Prices contained in Seller issued quotations or proposals expire thirty (30) days from the date of quotation and are subject to change or termination by notice during this period.
- (B) Prices contained in Seller issued quotations are exclusive of all taxes, including, but not limited to sales, use, VAT and excise taxes as well as all tariffs, duties, and other charges imposed on or measured by the sale of Products (collectively, “**Taxes**”), and Customer will pay for all Taxes, excises, or other charges (except taxes on or measured by net income) that Seller may be required to pay to any government (foreign, national, state, or local) with respect to the production, sale, or transportation of any Products (and replacements), except where the law expressly provides otherwise. Customer hereby agrees to indemnify and hold Seller harmless for any and all Taxes that are the responsibility of Customer and penalties or fines assessed against Seller or Customer related thereto, whether or not due to Customer’s claimed exemption from such imposition. Unless otherwise agreed to in writing by Seller, Customer will pay all freight, storage, handling, packaging, insurance, or similar charges. Customer shall pay all government fees levied on the installation and inspection of the Products.

- (C) Seller may require Customer to pay a deposit or provide an irrevocable letter of credit in favor of Seller in an amount determined by Seller and from a bank approved by Seller payable on presentation of commercial invoice, packing list, or a bill of lading indicating delivery to carrier.
- (D) Seller may offset or recoup any amounts owed by Seller to Customer against any amounts owed by Customer to Seller. Customer waives all right of offset and will pay all amounts owed to Seller regardless of any claim asserted by Customer.
- (E) Seller may change payment terms at any time, in its sole discretion.

3. **Purchase and Sale of Products.**

- (A) Customer shall issue Seller a Purchase Order for the Products and Seller shall have five (5) business days after receipt of the Purchase Order to issue Customer a written acceptance. In the event that Seller does not accept the Purchase Order within such five (5) business days period, the Purchase Order shall be deemed to have been rejected.
- (B) Seller will ship the Products to Customer in a manner and to a location directed by Customer at Customer's sole cost and expense.
- (C) Customer will pay for the Products requested by a Purchase Order within thirty (30) days after the date of the invoice from Seller to Customer **without setoff, recoupment, or deduction of any kind**. Interest shall accrue on all past due amounts at the rate of 1.5% per month and Seller shall be entitled to recover all reasonable attorney fees incurred in the cost of collecting such invoice.
- (D) Customer agrees to pay Seller a storage fee in the amount of ___ per day for inventory stored beyond ___ days.
- (E) All cash payments made pursuant to this Agreement shall be through the use of EFT (Electronic Funds Transfer).

4. **Representations and Warranties.** The Parties hereby represent and warrant that:

- (A) They have the right, power and authority to enter into this Agreement and to perform their obligations hereunder; and
- (B) Their performance of their obligations hereunder will not cause them to be in breach or violation of any contractual or legal obligation to any individual, partnership, firm, limited liability company, corporation, association, trust, unincorporated organization, or other entity.
- (C) Seller represents and warrants that the Products will conform to its specifications at the time of shipment.

5. Delivery of Products.

- (A) All Products shall be delivered F.O.B. Seller's shipping point. Whether or not Seller pre-pays shipping charges, risk of loss passes to Customer upon tender of the Products to a carrier. Any breach of this Agreement by Seller shall not affect the passing of the risk of loss to Customer notwithstanding any provision of law to the contrary.
- (B) Any delay or failure of either party to perform its obligations hereunder (other than payment obligations) shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, and slowdowns), labor shortage, customs delays, inability to obtain power, material, labor, equipment or transportation, commercial impracticability or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within five (5) days.

6. Technical Information.

- (A) All specifications, drawings, schematics, tests, designs, inventions, engineering notices, financial information, technical data, samples, prototypes, models and/or equipment ("Technical Information") supplied by Seller, directly or indirectly, will remain Seller's property and will be held in confidence by Customer. Technical Information will not be reproduced, used, or disclosed to others by Customer without Seller's prior written consent, and will be returned to Seller upon demand or upon completion by Seller of its obligations under the Terms. Customer will disclose Technical Information only to those employees of Customer having a need-to-know and bound by obligations of confidentiality equivalent to those contained in this Section 6.
- (B) Any information that Customer discloses to Seller with respect to the design, manufacture, sale, or use of Products is disclosed as part of the consideration for these Terms, and Customer will not assert any claim against Seller by reason of Seller's use of such information, which is not limited in any manner.
- (C) Seller will own all right, title, and interest in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how, or other intellectual property developed by Customer or Seller and related, directly or indirectly, to the Products under these Terms, whether or not Seller charges for the design, concept, invention, or other intellectual property.
- (D) Customer will assist Seller in perfecting its right, title, and interest and will execute and deliver all documents reasonably requested by Seller in order to perfect, register, or enforce the same. Seller will reimburse any associated costs

incurred by Customer in providing such assistance.

- (E) Without obtaining the prior written consent of Seller, Customer will not advertise or publish the fact that Customer has purchased Products from Seller, or use any trademarks or trade names of Seller in Customer's advertising or promotional materials. Customer may not resell the Products under any brand name other than Seller's. In the event of Customer's breach of this provision, Seller will have the right, among all other remedies, to cancel the undelivered portion of any Products and accelerate immediately all amounts due to Seller prior to cancellation.
- (F) Customer represents and covenants that all of the information provided by Customer to Seller is true and correct as of the date of the order.
- (G) Customer will indemnify Seller from all expenses and damages (including legal fees) related to a breach of this Section 6.

7. Identification of Products; Use of Seller Trademarks.

- (A) Without Seller's prior written approval, Customer shall not:
 - (i) Remove, alter, or obliterate any trademarks or symbols placed upon the Products by Seller;
 - (ii) Use, add, attach, or affix any trademarks, trade names, or symbols of any kind on or in connection with the Products other than those placed upon the Products by Seller;
 - (iii) Use the Seller trademark in any manner on, or in connection with, any Products or other products that Seller does not sell to Customer with the Seller trademark affixed to the item. Seller and Customer contemplate that they may agree on licensing of the Seller trademark for use on products not sold by Seller, but until such license(s) are executed, Customer shall not use the trademark except as provided in this Agreement;
 - (iv) Register or use any domain names with the Seller trademark as part of the domain name; or
 - (v) Distribute or otherwise use any marketing material in publication form, trade shows, or on the internet.
- (B) Customer will not use any trademark, trade name, or other designation owned or controlled by Seller in Customer's name, it being understood that all such trademarks, trade names, and other proprietary and protective rights, together with all goodwill attaching thereto, are and shall remain the sole property of Seller.
- (C) Customer acknowledges and agrees that all use of Seller trademarks inures to the benefit of Seller.

8. **Warranties.**

- (A) Seller does not make any express warranties other than those expressly contained in this Agreement. SELLER DISCLAIMS ALL IMPLIED WARRANTIES (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.
- (B) Customer shall purchase the Products from Seller for sale to Customer's customers. Customer assumes all risks associated with its selection and use of the Products in Customer's products.

9. **Capacity.** Seller may provide Customer with estimates or forecasts of its capacity for the manufacture or delivery of Products. Customer acknowledges that any estimates or forecasts are provided for estimation of output only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time. Seller makes no representation, warranty, guaranty, or commitment, express or implied, regarding any estimates or forecasts provided to Customer, including the accuracy or completeness of the estimates or forecasts.

10. **Security Interest.** In addition to any security interest granted by the UCC (as defined below), Customer grants Seller a security interest in the Products and documents related to Products and proceeds and goods from the Products to secure all obligations of Customer to Seller, whether or not arising under these Terms or an Agreement. Customer shall take any such action and execute any documents (and expressly authorizes any such action taken by Seller) deemed necessary by Seller to perfect and maintain such perfected security interest granted hereunder. Customer grants Seller an irrevocable power of attorney to sign Customer's name to a financing statement if necessary or convenient to perfect Seller's security interest. Customer will provide a landlord's waiver of any lien rights at the premises to which the Products will be installed. In case of a default by Customer, Seller, as the appointed agent of Customer, may peaceably enter the premises of the Customer and others and take other actions to repossess or render inoperable all Products in which it has a security interest. Products are considered strictly personal property no matter whether affixed to a permanent foundation, building, or structure, or for what purpose the Products may be used. Customer will maintain the Products in a segregated area and not co-mingle any Products which are not fully paid. Customer will not sell, exchange, transfer, convey, mortgage, pledge, hypothecate, or grant a security interest in unpaid Products and will advise Seller immediately in writing of any damage to, change in location of, or seizure of, any unpaid Products. Customer will insure such Products for damage or loss (including theft) in an amount not less than replacement value.

11. **Termination.** These Terms are subject to Seller's revocation or cancellation at any time, without liability, provided that Seller completes all current orders in process at the time of cancellation. Customer may cancel its order for Products prior to the order's completion only with the prior written consent of Seller and only by immediate payment to Seller of Seller's cost of manufacture and liquidated damages (including labor, engineering, materials, tooling, equipment time, overhead) computed using Seller's standard internal costing procedures, plus 15% of the sales price for the Products. Cost of manufacture includes all materials or services that Seller has ordered and that cannot be canceled and all costs incurred in canceling such

orders. Seller may retain without cost all materials and partially completed Products on cancelled orders.

12. **Compliance with Applicable Laws.** In performing their respective obligations under this Agreement, each Party shall be responsible for complying with all applicable laws and regulations (including without limitation antitrust laws and applicable safety standards) prescribed by any governmental body having jurisdiction over such Party.

13. **Indemnification.** Customer hereby agrees to indemnify, defend, and hold harmless Seller, its affiliates, and representatives (each, an “**Indemnified Party**”) from and against any and all losses, damages, costs, or expenses of whatever form or nature (including reasonable attorneys’ fees), which Indemnified Party may incur or be liable for as a result of any one or more third-party claims, suits, or proceedings, or threatened claims, suits, or proceedings (collectively, “**Claims**”), directly or indirectly, arising out of or caused by its breach of this Agreement, or any other acts or omissions by Customer, its affiliates, subsidiaries, employees, contractors, agents, and customers.

14. **Limitation of Liability.** IN NO EVENT SHALL SELLER BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR REVENUES, HOWEVER CAUSED, REGARDLESS OF WHETHER ANY SUCH CLAIM IS BROUGHT IN TORT, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHER THEORY OF LAW OR EQUITY. SELLER’S LIABILITY SHALL BE CAPPED AT THE AMOUNT OF REVENUE THAT IT HAS RECEIVED FROM CUSTOMER IN THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE.

15. **Waiver.** A Party may enforce any provision of this Agreement even if it has not previously enforced that provision or any other provision of this Agreement. A course of performance, course of dealing, or customs in the trade shall not constitute a modification or waiver by Seller or Customer of any right provided to Seller or Customer in this Agreement.

16. **No Strict Construction.** The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against either Party.

17. **Enforceability.** The Parties intend this Agreement to be enforced as written. However, if a court determines that a provision of this Agreement is unlawful, invalid or unenforceable: (A) the provision will be severed from this Agreement and the remainder of this Agreement will remain in full force and effect; (B) the provision will remain in effect in any other circumstances; (C) the Agreement will otherwise remain valid and enforceable; and (D) the court may reduce the duration or area, or both, of the provision, if the invalidity or unenforceability is because of the duration or area covered stated in the provision and in its amended form the provision will then be enforceable.

18. **Governing Law.** THE AGREEMENT SHALL BE GOVERNED, CONSTRUED AND ENFORCED UNDER THE STATE OF INDIANA INCLUDING THE UNIFORM COMMERCIAL CODE IN FORCE ON THE EFFECTIVE DATE OF THIS AGREEMENT

("UCC"), EXCEPT AS PROVIDED HEREIN. The United Nations Convention on the International Sales of Goods shall not apply. Any services to be provided hereunder, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units), shall be considered ancillary to a sale of goods and the UCC shall apply to all goods and services to be provided hereunder.

19. **Exclusive Jurisdiction and Consent to Service of Process.** THE FEDERAL AND STATE COURTS OF BOONE COUNTY, INDIANA SHALL HAVE EXCLUSIVE JURISDICTION OVER THE PARTIES AND THE CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT. The Parties stipulate to the convenience of such courts in general, as to all litigation, and irrevocably submit to the jurisdiction of such courts.

20. **Assignment.** Customer may not assign its rights or obligations under this Agreement without the prior written approval of Seller. Seller may assign its rights and obligations under this Agreement upon notice to Customer.

21. **Relationship of Parties.** Seller and Customer are independent contracting parties and nothing in the Agreement shall make either party the agent, joint venturer, or legal representative of the other for any purpose whatsoever, or grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Although third parties may be referenced, there are no third party beneficiaries to the Agreement.

22. **No Third Party Beneficiaries.** Except as expressly provided herein, this Agreement is only for the benefit of the Parties.

23. **Entire Agreement.** This Agreement is the entire agreement between the Parties and supersedes any previous contracts, agreements, or understandings related to the subject matter of this Agreement. The Parties may only modify this Agreement by a writing signed by both Parties. All terms of this Agreement are incorporated into each Purchase Order submitted pursuant to this Agreement. In the event of any conflict with the terms of this Agreement or any Purchase Order or other document, the terms of this Agreement shall control.