

STANDARD TERMS AND CONDITIONS OF KBK QUOTES AND PURCHASES ORDERS

Unless a written contract has been executed between KBK Industries, LLC ("KBK") and the Client that governs terms and conditions for commercial dealings between KBK and the Client, these Terms and Conditions constitute a binding contract between KBK and the Client and are referred to herein as either "Terms and Conditions" or this "Agreement". Client accepts these Terms and Conditions by placing an order for the products listed in the attached Quotation or Purchase Order. Client may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in such purchase order are not accepted and will be null and void. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any purchase order or invoice, or any document in electronic or written form that is signed and delivered by each of the parties. This Agreement contains the entire understanding of the parties with respect to the matters contained herein and supersedes and replaces in its entirety any and all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties with respect to the subject matter hereof.

1. **ORDER ACCEPTANCE.** Orders issued by Client shall only be valid Orders if KBK provides confirmation of KBK's acceptance of the Order. This "Order Acceptance" may take the form of either a written acceptance or KBK's performance of the Order.

2. **PRODUCT DELIVERY.** Upon Order Acceptance, KBK shall confirm acceptance of the requested Delivery Date or Delivery Schedule specified in the Client's Order. Should KBK not be able to deliver in accordance with the requested Delivery Date or Delivery Schedule requested the Client Order, KBK and the Client agree that they will determine a mutually agreeable Delivery Date or Delivery Schedule prior to KBK's acceptance of the order. Such agreement shall be in writing. Client agrees to accept delivery within 30 days of the Delivery Date for the Order. Should the customer delay delivery beyond the agreed Delivery Date or Delivery Schedule, the Client agrees that KBK may bill the Client for the product order and reasonable storage costs based on the agreed Delivery Date or Delivery Schedule; to pay for the product in accordance with the payment terms

specified in this agreement; and agrees that all risk of loss or damage shall pass to the Client.

3. **CHANGE ORDER OR ORDER CANCELLATION.** Client acknowledges that the products and services provided by KBK are custom products produced to the Client's unique specifications. As such, once KBK accepts an Order, the Client may not change or cancel an Order without KBK's written approval.

a. **Change Order.** In the event the Client desires to change or revise any product or services (a "Change Order") from the unique specifications on which such product or service is based the Client shall notify KBK in writing of the proposed Change Order. The notice shall include the documentation necessary to support an adequate investigation by KBK as to the impact of the Change Order. KBK shall use its best efforts to review the impact of the Change Order and give Client notice of acceptance of any requested change within one (1) week. All Change Orders will be reviewed and agreed upon in writing by both parties prior to their implementation. Emergency Change Orders will be immediately implemented at Client's request. Client will be responsible for all cost increases associated with the implementation of a Change Order.

b. **Cancellation.** Upon cancellation of an Order, the Client agrees to reimburse KBK for any and all costs incurred for the Order and any unique or excess purchase commitments made by KBK related to the cancelled Order.

4. **INVOICING; PAYMENT.** Unless otherwise confirmed by KBK in writing at Order Acceptance, Client shall have 30 days from the date of the invoice to pay the amount due thereon, or to notify KBK in writing of a bona fide dispute asserted in good faith as to one or more of the invoice items. If KBK has not received payment of the invoiced amount within 30 days from the date of the invoice, KBK shall be entitled to claim and pursue all available legal and equitable remedies against Client to recover the invoiced amounts (except amounts in dispute), and shall be entitled to recover from Client all invoiced amounts not in dispute, plus KBK's collection and litigation costs (including attorney fees), plus interest on all amounts owed at the highest rate allowed by law.

5. **WARRANTY.** KBK warrants, to the Client only, that the products and services provided are

free from defects in material and workmanship. The duration of this warranty is twelve (12) months from the earlier of the delivery of the product or services or invoicing for the products and services (the "Warranty Period"). Products are deemed delivered upon the earlier of: (i) receipt by the Client or the Client's customer; or (ii) when invoiced by KBK. Services are deemed delivered when all work related to the services ordered is completed. If the Client or the Client's customer discovers a defect in material or workmanship during the Warranty Period, Client shall promptly notify KBK in writing. Such notification must be received within 30 days of the expiration of the Warranty Period. KBK shall not be responsible for repairs if notice is not given promptly upon discovery, and shall in no event be responsible for damage or repairs caused by delay in reporting. Within a reasonable time after such notification, KBK will correct any defect in material or workmanship with either new or used replacement parts. Such repair, including both parts and labor, is at KBK's expense. If KBK is unable to repair the product after reasonable attempts, KBK will provide, at its option, one of the following: (a) a replacement or (b) a full refund of the purchase price. These remedies are the Client's and their customer's exclusive remedies for breach of warranty.

IN NO CASE SHALL KBK BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY. SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF SAVINGS OR REVENUE, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME, THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS, AND INJURY TO PROPERTY. Any action for breach of warranty must be commenced within ninety (90) days following expiration of the Warranty Period.

Any modifications or repairs to products sold to Client shall void this warranty unless such modifications or repairs are performed by either KBK or an authorized service provider approved by KBK in writing.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. **COMPLIANCE WITH LAWS.** Client and KBK each agree to comply with all laws, rules, and regulations applicable to this Agreement or the performance of work hereunder. If either party is required to pay any fine or penalty resulting from the other party's violation of such laws, rules or regulations, the party who committed the direct violation shall immediately reimburse the other for any such payment.

7. **FORCE MAJEURE.** Except for the duty to make payments hereunder when due, and the indemnification provisions under this Agreement, neither Client nor KBK shall be responsible to the other for any delay, damage, or failure caused by or occasioned by a Force Majeure Event. As used in this Agreement, "Force Majeure Event" shall mean: Any act of God, act of nature or the elements, terrorism, insurrection, revolution or civil strife, piracy, civil war or hostile action, labor strikes, acts of public enemies, pandemic, federal or state laws, rules and regulations of any governmental authorities having jurisdiction over the premises, inability to procure material, equipment, or necessary labor in the open market, acute and unusual labor, material, or equipment shortages, or any other causes (except financial) beyond the control of either party. Delays due to any of the above causes shall not be deemed to be a breach of or failure to perform under this Agreement. Neither Client nor KBK shall be required against its will to adjust any labor or other similar dispute except in accordance with applicable law.

8. **INTELLECTUAL PROPERTY.** KBK retains all intellectual property rights in any property invented or composed in the course of or incident to the performance of KBK's work required under this Agreement. Client acquires no right or interest in any such intellectual property, by virtue of this Agreement or the work performed under this Agreement.

9. **INDEMNITY**

a. KBK agrees to protect, defend, indemnify and hold harmless Client, its officers, directors, employees or their invitees from and against all claims, demands, and causes of action of every kind and character without limit arising out of KBK's or its subcontractors' negligence or intentional misconduct in the performance or non performance of this Agreement, except for such

as may be caused by the negligence of Client, its agents or employees. KBK's indemnity under this Section shall be without regard to and without any right to contribution from any insurance maintained by Client. If it is judicially determined that the monetary limits of the insurance required hereunder or of the indemnities voluntarily assumed in this Paragraph (which KBK and Client hereby agree will be supported either by available liability insurance under which the insurer has no right of subrogation against the indemnitees, or voluntarily self-insured, in part or whole) exceed the maximum limits permitted under applicable law, it is agreed that said insurance requirements or indemnities shall automatically be amended to conform to the maximum monetary limits permitted under such law.

b. Client agrees to protect, defend, indemnify and hold harmless KBK, its officers, directors, employees or their invitees from and against all claims, demands, and causes of action of every kind and character without limit arising out of Client's or its subcontractors' negligence or intentional misconduct in performance or non performance of these Terms and Conditions, except for such as may be caused by the negligence of KBK, its agents or employees. Client's indemnity under this Section shall be without regard to and without any right to contribution from any insurance maintained by KBK pursuant to Section 10 above. If it is judicially determined that the monetary limits of insurance required hereunder or of the indemnities voluntarily assumed under this Section (which KBK and Client hereby agree will be supported either by available liability insurance, under which the insurer has no right of subrogation against the indemnitees, or voluntarily self-insured, in part or whole) exceed the maximum limits permitted under applicable law, it is agreed that said insurance requirements or indemnities shall automatically be amended to conform to the maximum monetary limits permitted under such law.

c. Client and KBK each waive any right to special, indirect and consequential damages against the other party hereto.

10. **SEVERABILITY.** In the event any provision of this Agreement is inconsistent with or contrary to any applicable law, rule, or regulation, the provision shall be deemed to be modified to the extent required to comply with the law, rule, or regulation, and this Agreement, as so modified, shall continue in full force and effect.

11. **JURISDICTION; VENUE; WAIVER OF JURY TRIAL.** This Agreement shall be governed, construed, and interpreted in accordance with the laws of the state of Kansas without regard to any choice of law provisions. Any claim or lawsuit arising from or relating to this Agreement shall be filed and maintained in a court of competent jurisdiction in Houston, Texas. To the extent allowed by law, the parties each waive their right to a jury trial for any matter arising from or relating to this Agreement.

12. **AGREEMENT NOT TO SOLICIT.** During the period through the later of Client acceptance and delivery of final payment by the Client to KBK and one year following KBK's receipt of final payment, Client agrees that it will not, without KBK's prior written consent, directly, or indirectly through third parties either (i) employ, solicit, engage or retain the services of KBK's employees, agents, subcontractors, vendors or personnel or (ii) intervene or pursue a working relationship with any subcontractors, vendors or suppliers of KBK that have provided products or services to KBK that are included in products or services delivered to the Client.