

1. DEFINITIONS

“Seller”:	KTR Corporation, an Indiana corporation.
“Buyer”:	The party contracting with Seller for the purchase of the Goods.
“Contract”:	Seller’s Terms and Conditions of Sale, any contract issued by Seller (including any quotation or acknowledgement), and any technical or commercial specifications or terms and conditions expressly agreed to by Seller in writing.
“Goods”:	All or any part of the products, goods, work, equipment and services to be provided by Seller under the Contract.

2. CONTRACT TERMS

All quotations, offers and tenders are made subject to these Terms and Conditions, and “Acceptance” of the Contract shall be subject to these Terms and Conditions, as may be amended from time to time by Seller. Buyer shall be deemed to have agreed to the terms hereof upon issuance of its purchase order to Seller via telephone, electronic communication or other means, sending its purchase order to Seller via facsimile, electronic communication, mail or other means, or performing any other act that indicates acceptance. Seller will send Buyer an order acknowledgement or other written or electronic communication confirming Buyer’s Acceptance of these terms. Any additional and different terms and conditions, including without limitation any general terms and conditions of Buyer attached to or referenced by its purchase order, not specifically agreed to by Seller in writing shall be deemed expressly rejected and shall not form part of the Contract.

These Terms and Conditions are intended by Seller to be part and parcel of any offer, counteroffer or acceptance addressed to Buyer. Upon Acceptance, the Contract shall constitute the final written expression of the entire agreement between Buyer and Seller. All prior, contemporaneous and subsequent representations, negotiations, and agreements, whether written or oral, including, but not limited to, terms and conditions submitted by Buyer, shall have no legal effect and shall not become part of the Contract unless expressly agreed to in writing by Seller and made a part hereof. No statement or recommendation made or assistance offered by Seller or its representatives shall constitute a waiver of any portion of these Terms and Conditions, change Seller’s liability or constitute any guarantee or warranty.

3. ORDER

All orders for Goods sold by Seller must be in the form of a purchase order and are subject to acceptance and approval by Seller’s credit department. All orders must show definite prices, delivery dates, exact quantities, complete product description, and if/when acknowledged by Seller in writing, shall be considered binding on all parties. All variations to an order requested by Buyer shall be in writing and the price shall be agreed prior to performance of any additional work by Seller. Buyer may request changes to a purchase order by submitting a written request to Seller, which shall be subject to acceptance by Seller. If Seller accepts any changes to a purchase order in accordance with this condition, then any dates quoted for delivery or completion shall be extended appropriately.

4. PRICE

All prices quoted are subject to change, without notice, at any time prior to Seller’s Acceptance of a purchase order issued by Buyer. In the event that (i) the cost of raw materials and/or components increases due to unanticipated circumstances or otherwise, including without limitation tariffs or any other regulation impacting the price, and/or (ii) a vendor raises its prices or imposes a surcharge on Seller, Seller reserves the right to increase prices and/or surcharge Buyer, and Buyer agrees to accept such price increase or surcharge until the term of such price increase or surcharge ends or until the termination of the Contract. Such prices and surcharges may be adjusted by Seller to reflect a change in underlying costs. If there is a delay in completion of shipment of any order due to any change requested by Buyer or as a result of any delay on Buyer’s part in furnishing information required for completion of the order, the price agreed upon at the time of Acceptance is subject to change. Unless otherwise agreed in writing by the parties, prices are EXW¹ shipping point (Incoterms 2010) and exclusive of all taxes – Federal, State or Local (including, without limitation, sales, use, excise, manufacturing, receipts, gross income, occupation, value-added and similar taxes). There will be added to the quoted price any sales or other tax or duty Seller may be required to collect or pay upon the sale of Goods quoted. If such amount is not included in the invoice for the Goods, it may be invoiced separately later. Unless specifically included in the price, the cost of any requested or required certification, engineering or other services, or required performance and/or payment bond will be added to the price.

5. TERMS OF PAYMENT

Unless otherwise agreed in writing by the parties, all invoices are payable within thirty (30) days of the invoice date and may be issued to Buyer on or any time after the Seller notifies Buyer in writing that the Goods are available for shipment. Where Goods are delivered by installments, Seller may invoice each installment separately and Buyer shall pay such invoices in accordance herewith. All payments shall be made in U.S. Dollars. Invoices not fully paid in accordance with terms are deemed overdue, and unpaid balances will accrue interest at the rate of one and one-half percent (1.5%) per month, unless prohibited by law, in which event invoices will be subject to interest charges at the maximum legal rate. No dispute arising under the Contract nor delays beyond the reasonable control of Seller shall interfere with Buyer’s prompt payment in full of any invoice. Time and terms of payment are essential hereto, and if any default therein be made by Buyer, or if the financial responsibility of Buyer shall at any time become impaired or unsatisfactory to Seller, Seller will have the right to terminate without notice or to defer or discontinue further shipments hereunder until past due payments are made or satisfactory assurance of Buyer’s financial responsibility is received by Seller (without prejudice, however, to any claims or rights which Seller may have in law or equity hereunder). If at any time Seller determines in its sole discretion that Buyer’s financial condition, payment practices or credit rating does not justify a sale on credit, Seller may require advance payment or such other payment assurances as it may deem acceptable in its sole discretion, and it may cancel any order without recourse by Buyer. Such rights will continue irrespective of any prior failure on the part of Seller to exercise such right. If Seller is required to refer any order to an attorney for collection, Buyer agrees that all costs, attorneys’ fees, and expenses of said collection shall be added to the amount due Seller from Buyer.

6. SHIPMENT AND DELIVERY

Unless otherwise agreed in writing by the parties, all Goods will be shipped EXW Seller’s facility (Incoterms 2010) and both title and risk of loss (including transportation delays and losses) shall pass to Buyer upon delivery to the carrier at the shipping point, regardless of whether Seller prepays freight. Seller reserves the right to prepay the freight and invoice Buyer for costs, including reasonable packaging costs. If Buyer does not specify a carrier, then Seller shall select the method of transportation. Time is not of the essence of the Contract, all shipping and/or delivery dates specified in a quotation or order confirmation are estimates only and Seller shall not be responsible for any delays whatsoever. The date of delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from Buyer. Seller will endeavor to comply with reasonable requests of Buyer to postpone delivery, but shall be under no obligation to do so. Where delivery is postponed other than due to default of Seller, or in the case of Buyer’s refusal or inability to accept any shipment in accordance with the terms of any order, Buyer shall be liable for freight, express, storage, extra cost of handling and all other applicable expenses incurred by Seller as a result of such postponement, refusal or inability. All Goods which have been altered or damaged are not returnable except with Seller’s prior written consent.

7. Inspection

Buyer shall inspect the Goods upon receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing during the time period set forth in this Section 7 addressed to 122 Anchor Rd., Michigan City, Indiana 46360, USA, Attention: KTR Quality Assurance, along with a copy of the writing delivered by email to Buyer's account representative with Seller (a "Notice of Nonconformity"), of any Nonconforming Goods (as defined below) during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Goods" means only the following: (a) Goods shipped are different than identified in Buyer's purchase order (e.g., type, quantity or weight of paper); (b) Goods' label or packaging incorrectly identifies its contents, or (c) Goods contain manufacturing defects, which include only defects in material or workmanship. In the event of any Nonconforming Goods arising from subparts (a), (b) or latent defects described in subpart (c) above, Buyer must provide the Notice of Nonconformity no later than ten (10) days after receipt of the Goods. In the event of any Nonconforming Goods arising from defects described in subpart (c) above that could not be known by visual inspection of the Goods upon receipt Buyer must provide the Notice of Nonconformity no later than the date that is the later of (i) five (5) days after noticing the defect or (ii) twelve (12) months after receipt of the Goods. Goods that have been altered or otherwise modified, and defects that arise out of processing or transport of the Goods will not constitute manufacturing defects.

8. TOOLING

Any equipment (including all jigs, dies and tools) which Seller constructs or requires for use in the production of materials for Buyer shall be and remain Seller's property and in Seller's possession and control, and any charges with respect to such equipment shall be for the use of such equipment. Seller will use commercially reasonable efforts to handle and store carefully while in its possession any materials or equipment owned or furnished by Buyer, provided, however that Seller shall not be liable for damage or loss thereof. When for three (3) consecutive years no orders have been received requiring the use of any equipment or materials referred to in this paragraph, Seller may, in its sole discretion, dispose of such equipment or materials as it sees fit, without liability to Buyer, provided written notice is submitted thirty (30) days in advance. Tooling required for the manufacture of custom designs may be quoted separately as a one-time charge to Buyer. Charges will be invoiced upon completion of manufacturer of the tooling.

9. LIMITED WARRANTY; LIMITATION OF LIABILITY

Seller warrants that the Goods will conform to Seller's published specifications in effect on the date of shipment and be free from defects in material and workmanship for a period of twelve (12) months from the date of shipment, or such other period as shall be agreed upon in writing by the parties. Seller's limited warranty excludes remedy for damage or defect caused by abuse; failure to resist, in the case of carbon steel components, oxidation or corrosion presenting after 10 days following the delivery date, and in the case of all components, corrosion or erosion from any corrosive agent or fluid, or due to deposits of foreign material from any fluid; modifications not executed by Seller; improper installation or operation; defects or failures arising out of, in any way related to, or as a result, either direct or indirect, of Buyer's failure to properly advise Seller of all normal and special operating conditions, known to or suspected by Buyer, when Seller is manufacturing the Product for a specific operation; normal wear and tear under normal usage, or failure after the expected life span under normal usage. All weights stated in Seller's catalog and lists are approximate and are excluded from this warranty. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, SELLER MAKES NO OTHER WARRANTY WITH RESPECT TO THE GOODS DELIVERED HEREUNDER AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, ARISING BY OPERATION OF LAW OR OTHERWISE.

Seller shall not be liable for a breach of the warranty set forth herein unless: (i) Buyer gives written notice of any defect in the Goods, reasonably described, within a reasonable period of time after discovery (not to exceed thirty (30) days), (ii) Buyer obtains a return authorization code from Seller, (iii) the defective Goods are shipped within the warranty period specified above, prepaid, to Seller's factory, with evidence that the Goods have been properly installed, maintained and operated in accordance with Seller's instructions, and (iv) Seller reasonably verifies Buyer's claim that the Goods are defective. Seller shall not be liable for a breach of the warranty set forth herein if: (a) Buyer makes any further use of such Goods after giving such notice; (b) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (c) Buyer alters or repairs such Goods without the prior written consent of the Seller. With respect to any such Goods during the Warranty Period, the Seller shall, in its sole discretion, either: (x) repair or replace such Goods or (y) credit or refund the price of such Goods at the pro rata contract rate provided that, if the Seller so requests, Seller shall, at the Seller's expense, return such Goods to the Seller at its place of business.

The remedies of Buyer set forth herein are exclusive, and the total liability of Seller hereunder, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, and shall not exceed the purchase price of the Goods giving rise to any such claim for liability. IN NO EVENT SHALL SELLER OR ITS SUPPLIERS BE LIABLE TO BUYER, ANY SUCCESSORS IN INTEREST, OR ANY BENEFICIARY OF THIS CONTRACT FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES OR LOSSES, OR FOR ANY SECONDARY CHARGES OR ADMINISTRATIVE OR PUNITIVE DAMAGES, FINES, PENALTIES, FEES, EXPENSES AND OTHER CHARGES, ARISING OUT OF THE CONTRACT OR ANY BREACH THEREOF, WHETHER BASED UPON LOSS OF USE, LOSS OF PRODUCTION, LOST PROFITS OR REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED EXPENSES OF OPERATION OR CLAIMS OF CUSTOMERS OF BUYER FOR SERVICE INTERRUPTION, OR ANY OTHER TYPE OF ECONOMIC LOSS OR DAMAGE, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE.

10. INDEMNIFICATION

Buyer shall defend, indemnify and hold harmless Seller and its subsidiaries, affiliates, successors or assigns and each of their respective directors, officers, shareholders and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with (a) use, handling, storage, transportation, possession, processing, fabrication, resale, or any other activity involving the Goods after risk of loss has passed to Buyer, (b) Buyer's negligence, willful misconduct or breach of a Contract. Seller shall not be responsible for any Losses sustained by Buyer or any other person, and Buyer waives all such claims, arising out of or resulting from the improper installation or misapplication of the Goods, or from any defect or alleged defect in the design, manufacture, instructions, warnings or labeling of any of the Goods or any other product liability claim relating to any of the Goods. Buyer is solely responsible for all training related to the installation and use of any of the Goods. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

11. THIRD PARTY RIGHTS

Buyer shall bind subsequent buyers or lessees of the Goods to the terms of the Contract such that said third parties shall have no further rights against Seller than does Buyer. Buyer agrees to notify said third parties of this provision and to make this a condition of any contract concerning the Goods. In the event Seller is subject to any claims, losses, damages or expenses (including attorneys' fees) as a result of Buyer's failure to comply with this paragraph, Buyer shall indemnify and hold harmless Seller from all such claims, losses, damages or expenses (including attorneys' fees).

12. PROPRIETARY INFORMATION; CONFIDENTIALITY

Buyer acknowledges the Seller's ownership of all trademarks, service marks, copyrights, imprints, rights of publicity, patents, design patents, registered designs, industrial designs, product design, trade secrets and other intangible rights relating to the Goods ("Seller Intellectual Property") and agrees that Buyer shall have no right, title or interest whatsoever in any Seller Intellectual Property. All non-public, confidential or proprietary information of the Seller, including, but not limited to, Seller Intellectual Property and all other specifications, samples, models, designs, plans, drawings, documents, data, software, business operations, customer lists, pricing, discounts or rebates, disclosed by the Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by the Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from the Seller. Seller shall be entitled to injunctive relief for any violation of this provision.

13. STATUTE OF LIMITATIONS

Pursuant to Section 2-725(1) of the Uniform Commercial Code, Buyer and Seller agree that the statute of limitations is limited to eighteen (18) months from the time a breach occurs.

14. MANUALS AND WARNINGS

Seller's instruction manuals and warnings are available upon request. Buyer acknowledges and accepts complete responsibility for ensuring that such manuals and warnings, and all future updates, are made available to and utilized by all users of the Goods; and that said individuals are properly trained to safely and competently operate the Goods. Buyer further accepts complete responsibility to make such instruction manuals and warnings available to all subsequent purchasers of the Goods. Buyer agrees to indemnify and hold harmless Seller from any and all claims, losses, damages or expenses (including attorneys' fees) arising from or in any way connected with Buyer's responsibility hereunder.

15. TERMINATION/CANCELLATION

Cancellation of orders once placed with or accepted by Seller can be made only with Seller's written consent. Should Buyer, due to good cause, desire to affect the cancellation of an accepted order, Seller will accept such cancellation on the following basis:

- (a) For all made-to-order Goods: Buyer shall pay the purchase price in full for all items completed and ready for delivery as of the date of Seller's written acceptance of the cancellation; Buyer shall pay a percentage of the purchase price on such items as shall not be completed, equivalent to the percentage of completion; and Buyer shall pay in full the cost of all raw materials, consumable materials, manufacturing dies, tools, patterns and fixtures acquired exclusively for the order, and will take ownership and possession of all such items and will be responsible for labor or other documenting expenses incurred in connection therewith.
- (b) For all made-to-stock Goods: Buyer shall pay (i) all costs and expenses of placing the cancelled Goods in a saleable condition (restocking charge), (ii) any outgoing and incoming freight charges incurred by Seller in connection with the delivery and return of such Goods, if applicable, and (iii) all reasonable and necessary expenses incurred by Seller directly incident to the order up to the date of cancellation.

Invoices covering said costs shall be due and payable immediately upon Seller's acceptance of cancellation. A stop work order will be deemed a cancellation and the provisions of this paragraph shall apply. If Buyer purchases Goods pursuant to an order for use in a contract with the U.S. Government and the U.S. Government terminates Buyer's prime contract or a portion thereof for convenience, Buyer shall have the right to terminate only that portion of its contract with Seller which has been terminated by the U.S. Government in its prime contract. In such case, Buyer shall be responsible for those costs set forth above.

16. FORCE MAJEURE

Seller shall not be liable for failure to deliver or delays in delivery or manufacture occasioned by causes beyond the reasonable control of Seller including, but not limited to, pandemics, strikes, labor slowdowns, lockouts, fires, floods, riots, thefts, accidents, embargoes, import or export limitations, war or other outbreak of hostilities, terrorist activity, sabotage, riot, insurrection, civil disobedience or disturbance, acts of God, acts of the public enemy, unusually severe weather, inability to obtain shipping space, machinery breakdowns, delay of carriers, interruptions or failures of transportation, utilities, computers or communications, delay in obtaining or inability to obtain sufficient labor, materials, supplies or services, and any action by or law or regulation of any government, quasi-governmental or supranational body or agency. In the event of any such delay, (1) the time for performance shall be reasonably extended, (2) Seller and Buyer shall take reasonable steps to reestablish the timetable set out in the Contract, and (3) an adjustment shall be made for additional costs to Seller. If the Force Majeure event results in Contract termination, Buyer shall reimburse Seller for the applicable costs set forth in Section 14 above.

17. GOVERNING LAW

This Agreement shall be governed by, and interpreted according to, Indiana law, excluding the United Nations Convention on Contracts for the International Sale of Goods. Any legal action or proceeding with respect to this Agreement may be brought only in the state in LaPorte County, Indiana or the federal courts for the Northern District of Indiana. Vendor hereby irrevocably consents that such courts shall have personal jurisdiction over Vendor and waives any objection that the court is an inconvenient forum.

18. WAIVER

Any term found to be illegal or unenforceable shall be severed and shall not, in any way, affect the validity of the Contract. Seller's failure to enforce any rights or remedies available in the event of Buyer's default shall not constitute a waiver and shall not bar the enforcement of such rights should the default continue as in the event of future defaults.

19. ASSIGNMENT

Buyer shall not assign the Contract or any order, or any interest therein, or any rights hereunder, without the prior written consent of Seller. Any purported assignment or delegation in violation of this provision shall be null and void. No assignment or delegation shall relieve Buyer of any of its obligations hereunder. Seller shall be entitled to assign or sub-contract the whole or part of its obligations under the Contract.

20. COMPLIANCE WITH LAWS

Buyer agrees to comply with all applicable federal, state, local and foreign laws, statutes, ordinances, regulations, rules or orders or other requirements of any governmental, regulatory or administrative agency or authority or court or other tribunal to which Buyer may be subject as a result of the activities contemplated by these Terms and Conditions or the resale, re-export or transfer of the Goods to any third party.

21. EXPORT CONTROL REGULATIONS

Buyer understands that Seller and the Goods are subject to the United States Export Administration Act, the Trading with the Enemy Act, the International Traffic in Arms Regulations (in the case of Goods that are considered defense articles), and other laws and regulations of the United States of America (collectively, the "Regulations"), which Regulations are enforced, inter alia, by the United States Departments of Commerce, State and Treasury. The Regulations, in part, prohibit export or diversion of the Goods to certain countries. Buyer agrees to abide by all Regulations, including those concerning the resale and disposition of the Goods. Buyer warrants that it will not sell, transfer or support, directly or indirectly, or assist in any sale or transfer of any products or product technology in countries or to users concerning which such sale, transfer or support is not permitted under applicable Regulations. Buyer shall defend, hold harmless and indemnify Seller for any damages resulting to Seller from a breach of this paragraph by Buyer.

22. GOVERNMENT CONTRACTS

If Buyer purchases Goods for use in a contract with the United States government, then all terms and conditions contained in the form entitled "Additional Terms and Conditions Applicable to Government Contracts" shall apply to the Contract as if contained herein, whether attached to the order or not. If not attached, copies will be furnished to Buyer upon request. Alternatively, at Seller's discretion, such additional terms and conditions shall be specified in Seller's quotation and/or order acknowledgement and shall be binding upon the parties as if set forth in full herein.

23. PRINTERS, STENOGRAPHIC, AND CLERICAL ERRORS

Seller is not responsible for printers' errors made in any of its publications and other forms of printed matter, or for any stenographic and clerical errors. All such errors are subject to correction.