



TKM UNITED STATES, INC. (“SELLER”)

TERMS AND CONDITIONS OF SALE

- 1. Agreement and Acceptance.** These terms and conditions, together with any related purchase orders of Buyer, shall constitute the complete agreement of the parties with respect to the purchase and sale of goods specified in said purchase orders (the "Agreement"), and shall apply to any and all purchases of merchandise by Buyer from Seller. Except as otherwise agreed in writing, any contract of sale resulting from Buyer's purchase orders pursuant to this Agreement is expressly conditional on acceptance of Buyer's order at Seller's main office.
- 2. Limited Warranties.** Seller warrants title to and freedom from encumbrance of the products sold hereunder. There are no understandings, terms, conditions or warranties not fully expressed herein or in any written warranty published by Seller. There are no warranties, express or implied, with respect to products sold hereunder which are misused, abused, or operated on mechanical equipment improperly designed or maintained. Seller makes no other warranty whatever, express or implied. THE WARRANTIES PROVIDED HEREIN ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND ANY IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES WHICH EXCEED OR DIFFER FROM THE WARRANTIES HEREIN EXPRESSED ARE DISCLAIMED BY SELLER AND EXCLUDED FROM THIS AGREEMENT.
- 3. Limitation of Buyer's Remedies.** SELLER'S LIABILITY HEREUNDER SHALL BE LIMITED TO THE OBLIGATION TO REPAIR OR REPLACE (F.O.B. SELLER'S FACILITY) PRODUCTS PROVEN TO HAVE FAILED TO MEET THE SPECIFICATION OR TO HAVE BEEN DEFECTIVE IN QUALITY OR WORKMANSHIP AT THE TIME OF DELIVERY, OR ALLOW CREDIT THEREFOR, AT ITS OPTION. SELLER'S TOTAL CUMULATIVE LIABILITY IN ANY WAY ARISING FROM OR PERTAINING TO ANY PRODUCT SOLD OR REQUIRED TO BE SOLD UNDER THIS CONTRACT SHALL NOT IN ANY CASE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR SUCH PRODUCT. SELLER SHALL HAVE NO FURTHER LIABILITY UNDER ANY CIRCUMSTANCES FOR DAMAGES OF ANY KIND TO BUYER'S EMPLOYEES, AGENTS, SUBCONTRACTORS, INVITEES OR OTHER THIRD PARTIES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURIES AND PROPERTY DAMAGE RESULTING FROM USE OR HANDLING OF SELLER'S PRODUCTS. BUYER SHALL NOT BE ENTITLED TO PUNITIVE DAMAGES FOR BREACH OF THIS AGREEMENT UNDER ANY CIRCUMSTANCES. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S EXCLUSIVE REMEDIES. BUYER ACKNOWLEDGES THAT SELLER'S PRICE FOR THE PRODUCTS PURCHASED BY BUYER IS BASED UPON AND IS

A SUFFICIENT CONSIDERATION FOR LIMITING SELLER'S LIABILITY
HEREUNDER.

4. **Indemnification.** Buyer shall defend, indemnify and hold harmless Seller with respect to any claim, cause of action, obligation or liability asserted against Seller by any party which arises out of or is related in any manner to any breach of the terms and conditions hereof by the customer, any alteration or modification of Seller's products not approved in writing by Seller, or any irregular design, use, storage, installation or application thereof by the customer or any of the customer's employees, agents, subcontractors, invitees, customers or others with access to Seller's products, or as to any claim that Seller's fabrication of the products pursuant to designs supplied by the customer infringed any patents, trade secrets or other rights of third parties.

5. **Shipment and Delivery.** Shipment dates are approximate only. The Seller will exercise its best efforts to ship on schedule, but shall not be liable to Buyer or others for any damage or loss whatsoever caused by any delay in delivery. Title shall pass to Buyer upon delivery to the carrier F.O.B. point of manufacture. Unless specified in Buyer's order accepted by Seller, Seller shall select the means of shipment and delivery. Buyer shall not have the right to redirect or divert shipments without the prior written consent of Seller.

6. **Payments; Price Adjustments.** Unless otherwise specified by Seller, all prices are F.O.B. Seller's factory or warehouse from which shipment is made, and payment will be net/cash 30 days from date of invoice. Invoices unpaid and past due will be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of eighteen percent (18%) per annum or the maximum allowable interest rate under applicable law, and Buyer shall be responsible and liable for all expenses incurred by Seller in collection, including reasonable attorneys' fees. The prices stated herein do not include any sales, use, or other taxes unless so stated specifically. Such taxes will be added to invoice prices in those instances in which Seller is required to collect them from Buyer; provided, however, that if Seller does not collect any such taxes and is later asked by or required to pay the same to any taxing authority, Buyer will make such payment to Seller or, if requested by Seller, directly to the taxing authority. At Seller's option, prices may be adjusted to reflect any increase in the costs of Seller resulting from state, federal or local legislation, or any change in the rate, charge, or classification of any carrier.

If Buyer shall fail to comply with any provision or to make payments in accordance with the terms of this agreement or any other agreement between Buyer and Seller, Seller may at its option defer shipments, or, without waiving any other rights it may have, terminate this agreement. All deliveries shall be subject to the approval of Seller's credit department.

7. **Force Majeure.** Seller shall not be liable for any delays or nonperformance resulting from force majeure, including, without limitation, strikes, labor disturbances, material shortages, nonperformance by subcontractors or suppliers, or other abnormal manufacturing conditions, delays or failures of carriers or communications, fire, flood,

storms, accident, riot, war and invasion, governmental requisitions or priorities, acts of God, or other causes beyond Seller's reasonable control.

8. **Claims; Commencement of Actions.** Buyer shall promptly inspect all products upon delivery. No claims for shortages will be allowed unless such shortages are reported to Seller within 10 days after delivery. No other claims against Seller will be allowed unless asserted in writing within 60 days after delivery or, in the case of an alleged breach of warranty, within 60 days after the date within the warranty period on which the defect is or should have been discovered by Buyer.

Any lawsuit or other action based upon breach of this contract or upon any other claim arising out of this sale (other than an action by Seller for any amount due to Seller by Buyer) must be commenced within one year from the date of the tender of delivery by Seller or, in the case of a cause of action based upon an alleged breach of warranty, within one year from the date within the warranty period on which the defect is or should have been discovered by Buyer.

9. **Buyer's Obligation; Rights of Seller.** If Seller shall at any time doubt Buyer's financial responsibility, Seller may demand adequate assurance of due performance or decline to make any further shipments except upon receipt of cash payment in advance or security. If Seller demands adequate assurance of due performance and the same is not forthcoming within 10 days after the date of Seller's demand, Seller may, at its option, (i) continue to defer further shipments under this order and/or any other order from Buyer which has been accepted by Seller until adequate assurance is received, or (ii) cancel this order and/or any other orders from Buyer which have been accepted by Seller and recover damages. If Buyer fails in any way to fulfill the terms and conditions on the front or the back hereof, Seller may defer further shipments until such default is corrected or cancel this order and recover damages. Seller shall have a security interest in, and lien upon, any property of Buyer in Seller's possession as security for the payment of any amounts owing to Seller by Buyer.

10. **Cancellations.** After acceptance by Seller, orders shall not be subject to cancellation by Buyer except with Seller's consent and upon terms that will indemnify Seller against all direct, incidental and consequential loss or damage.

11. **Export.** If the Products are to be exported, this order is subject to Seller's ability to obtain export licenses and other necessary papers within a reasonable period. Buyer will furnish all Consular and Custom declarations and will accept and bear all responsibility for penalties resulting from errors or omissions thereon. Buyer shall not reexport the Products or any goods or items which incorporate the Products if the reexport would violate United States export laws.

12. **Conflicting Provisions Offered by Buyer.** Any terms and conditions of any purchase order or other instrument issued by Buyer, in connection with the subject matter of this document, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any manner whatsoever unless accepted by Seller in writing.

13. **Waiver.** Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

14. **Other Rights or Remedies.** Except as otherwise provided herein, any rights or remedies granted hereunder to either party shall be in addition to, and not in lieu of, any other rights or remedies of such party at law or in equity.

15. **Entire Agreement.** This document contains the entire agreement between Seller and Buyer and constitutes the final, complete and exclusive expression of the terms of the agreement, all prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter hereof being merged herein. By way of illustration and not limitation, Buyer's order shall be deemed to incorporate, without exception, all the terms and conditions hereof notwithstanding any order form of Buyer containing additional or contrary terms or conditions, unless Buyer shall have expressly advised Seller to the contrary in a writing apart from such order form, and no acknowledgment by Seller of, or reference by Seller to, or performance by Seller under, an order of Buyer shall be deemed to be an acceptance by Seller of any such additional or contrary terms or conditions. In the event of a written request by Buyer for additional or contrary terms or conditions, then such modifications may be made in these terms and conditions only by a written instrument signed by one of Seller's officers.

16. **Severability.** In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof.

17. **Governing Law.** This document and the sale of all Products shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, as applicable to contracts executed and wholly performed therein.

18. **Equal Opportunity Clause.** This clause applies only in the event that the Products are to be used in whole or in part for the performance of government contracts and where the dollar value of said Products exceeds, or may in any one year exceed, \$10,000:

"In connection with the performance of work under this contract, the contractor (subcontractor) agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor (subcontractor) agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause."

"The provisions of the Equal Opportunity Clause, as promulgated by Executive Order 11246 dated September 24, 1965, as amended, are incorporated herein by reference"