

GENERAL TERMS AND CONDITIONS FOR SALE OF PRODUCTS, EQUIPMENT, AND MATERIALS

1. APPLICABILITY: Any provision by PK Industrial Supply, LLC (“PKI”) of products, equipment, or materials (“Goods”) to customer set forth in a proposal, bid, agreement, or order (“Customer”) is subject to these terms and conditions of sale (“Terms and Conditions”). These Terms and Conditions shall apply to all sales transactions between PKI and Customer unless otherwise specifically agreed to in writing by both parties. Any additional or different terms proposed by Customer are expressly objected to and shall not be binding upon PKI unless expressly accepted in writing by PKI’s authorized representative. Any order for Goods shall constitute acceptance of these Terms and Conditions.

2. INCOTERMS: PKI shall deliver the Goods to Customer FCA PKI’s facility, place of manufacturer, or warehouse. Partial delivery and delivery in advance of the delivery schedule shall be permitted unless otherwise agreed to by PKI and Customer. Risk of loss will transfer to Customer upon tender of Goods to Customer, Customer’s representative, or common carrier. If Customer causes or requests a delay of shipment, or if PKI ships or delivers an order erroneously as a result of inaccurate, incomplete, or misleading information supplied by Customer or Customer’s agents or employees, all expenses incurred by PKI, such as for preparation and placement into storage, handling, inspection, preservation, insurance, removal charges, interest, and any VAT or other taxes imposed directly or indirectly under applicable law shall be reimbursed or paid by Customer. Title and risk of loss shall pass when Goods are delivered at the originally agreed point.

3. FORCE MAJEURE: A delay in or failure to perform by a party, other than the payment of money, will not constitute a default that exposes it to liability for breach if and only to the extent the delay or failure to perform is caused by an occurrence beyond the reasonable control of the party and not reasonably foreseeable by the party, including, but not limited to, an act of God or the public enemy; expropriation or confiscation of facilities; compliance with any order or requirement of any governmental authority; act of war, rebellion or sabotage or damage resulting there from; fire, flood, explosion or accident; pandemics or epidemics; riots or strikes or other concerted acts of workmen, whether direct or indirect; whether or not of the same class or kind as those specifically above named, which is not within the control of the party and which, by the exercise of reasonable diligence, the party is unable to prevent or remedy. The performance dates shall be extended for a period equal to the time lost by reason of such delay, plus such additional time as may be reasonably necessary to overcome the effect of such delay.

4. WARRANTY: Subject to the limitations set forth in these Terms and Conditions, PKI warrants to Customer that the Goods shall be delivered free from defects in title and shall conform to the specifications agreed to in writing by PKI. All other warranties are those extended by the manufacturer of the Goods. PKI assigns to Customer any and all manufacturer warranties and will assist Customer to obtain repair, replacement, or other applicable remedy for a breach of warranty made known to PKI during the warranty period. These warranties shall be void if there has been misuse, accident, modifications, unsuitable physical or operating environment, improper maintenance, storage, or installation of the Goods. THE REMEDIES SET FORTH IN PARAGRAPH 4 CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES FOR ALL CLAIMS ARISING OUT OF OR RELATING TO ANY FAILURE OF, DEFECT OR NON-CONFORMITY IN, THE GOODS, REGARDLESS OF WHEN THE FAILURE, DEFECT OR NON-CONFORMITY ARISES AND REGARDLESS OF CAUSE OR ACTION. THE WARRANTIES SET FORTH IN PARAGRAPH 4 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS, AND GUARANTEES, WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY. NO IMPLIED OR STATUTORY WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

5. TERMINATION: In the event of a termination for any reason, except for breach by PKI, Customer shall pay PKI (i) for all Goods delivered before termination, (ii) all costs and expenses, including overhead, incurred by PKI in connection with the Goods in progress, but not delivered, and (iii) the costs associated with vendor cancellation fees or claims arising from the termination of any vendor agreements.

6. PAYMENT: Customer shall pay to PKI all invoiced amounts without any set-off within thirty (30) days from the date of the relevant invoice. If Customer disputes any invoice in whole or in part, Customer shall promptly (and in any event within 10 days of the date of the relevant invoice) notify PKI of the dispute and shall pay the undisputed portion. In addition to other remedies and PKI’s right to revoke any discounts from list price, Customer shall pay (i) interest to PKI at the rate of 1.5% per month, not to exceed the lesser of 18% per annum or the maximum amount permitted by applicable law, and (ii) PKI’s cost of collection, including attorney fees and court costs, on all amounts not timely paid.

7. TAXES: Pricing to Customer is exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; shipping and handling charges; and vendor enrollment fees. PKI will add any fees that it is required to pay to the total amount of its invoice to Customer.

8. EXPORT CONTROL LAWS: Customer agrees not to sell, re-export, or transfer US, UK, or EU origin Goods or any related technical data in violation of the applicable export control laws. Further, Customer warrants that it is not subject to US, UN, or EU sanctions, including, but not limited to, being identified on the US Specially Designated Nationals (SDN) List, or more than 50 percent owned by an SDN.

9. LIABILITY & INDEMNITY: TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OTHER PARTY FROM AND AGAINST ALL CLAIMS OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS TO THE PROPORTIONATE EXTENT OF THE PARTY’S NEGLIGENCE OR WILLFUL MISCONDUCT. NOTWITHSTANDING ANYTHING IN THESE TERMS AND

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CONDITIONS TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER THESE TERMS AND CONDITIONS FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE OF ASSETS, LOSS OF PRODUCT OR FACILITIES' DOWNTIME. EACH PARTY'S MAXIMUM LIABILITY UNDER THESE TERMS AND CONDITIONS SHALL NOT EXCEED THE TOTAL PRICE OF THE SALE.

10. INDEPENDENT CONTRACTOR: PKI is and at all times will be an independent contractor. Nothing in these Terms and Conditions creates an employer/employee, principal/agent, or joint venture relationship between PKI and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

11. US GOVERNMENT CONTRACTS: This Paragraph 11 applies only if the Goods is a direct or indirect sale to any agency of the US government or is funded in whole or in part by any agency of the US government. Customer agrees that all Goods provided by PKI meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to these Terms and Conditions, the country of origin of Goods is unknown unless otherwise specifically stated by PKI. Customer agrees any services offered by PKI are exempt from the Service Contract Act of 1965 (FAR 52.222-41).

If Customer is an agency of the U.S. government, then as permitted by FAR 12.302, Customer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Customer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS or commercial items and as appropriate for the purchase order price.

If Customer is procuring Goods as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. government, then Customer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS or commercial items and as appropriate for the purchase order price. If the reasonableness of the price cannot be established through adequate price competition, or if cost or pricing data should be required for any other reason, or if a Good cannot be considered a "commercial item", PKI may terminate the agreement or purchase order without penalty and be reimbursed for Work done before the effective date of termination.

12. MISCELLANEOUS:

12.1 NOTICE: All notices shall be in writing sent via registered or certified mail, return receipt requested, postage prepaid, addressed to the individual and address indicated for such party in an agreement or purchase order or, if there is no agreement or purchase order, addressed to the other party. A party may send a notice via electronic mail, but no such notice will be deemed given unless and until it is actually received by a party.

12.2 SEVERABILITY: If any provision of these Terms and Conditions is held to be illegal, invalid, or unenforceable under any applicable laws, (i) that provision will be fully severable; (ii) these Terms and Conditions will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of the agreement between the parties hereto; and (iii) the remaining provisions of these Terms and Conditions will remain in full force and effect.

12.2 NO WAIVER: The failure by any party hereto to exercise a right or enforce an obligation will not constitute a waiver unless waived in writing by an authorized representative of the waiving party and the waiver will not constitute a continuing waiver unless the waiver in writing explicitly states that it is a continuing waiver; nor will any delay or omission of a party in exercising any right under these Terms and Conditions in any manner impair the exercise of that right or any like right accruing to it after the delay or omission. No waiver will be effective unless made in writing and signed by the party to be charged with that waiver.

12.3 ASSIGNMENT: Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under these Terms and Conditions without PKI's prior written consent, and any attempt to do so without consent will be void. These Terms and Conditions will be binding on the respective successors and assigns of the parties hereto.

12.4 SURVIVAL: Paragraphs 1 through 12 will survive termination or expiration of these Terms and Conditions, in addition to any provisions which by their nature should, or by their express terms do, survive or extend beyond termination or expiration of these Terms and Conditions.

12.5 GOVERNING LAW AND JURY WAIVER: The interpretation and performance of these Terms and Conditions are governed by the laws of the State of Texas, excluding any conflict of laws rule that would apply the law of a different jurisdiction. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any legal actions or proceedings relating to or arising from these Terms and Conditions.