

TERMS & CONDITIONS OF SALE

1. **ACCEPTANCE OF ORDERS:** The acceptance of all orders and all sales by Keselowski Advanced Manufacturing, LLC ("KAM") are made subject to and expressly conditional upon these terms and conditions (the "Agreement"). Any of Buyer's terms and conditions which are different from or in addition to those contained herein are hereby objected to and shall be of no effect unless specifically agreed to in writing by KAM. Buyer shall be deemed to have expressly accepted this Agreement if Buyer expressly so agrees in writing or accepts any shipment of Products. No sales or other independent representative of KAM shall have any authority to vary or modify this Agreement in any respect or to agree to any additional terms or conditions.
2. **QUOTATIONS:** Each quotation is valid for thirty (30) days from its date unless otherwise stated in the quotation.
3. **PRICE POLICY:** Price in effect at time of shipment. However, if a price increase becomes effective after the date of the order, it will not apply to items shipped within thirty (30) days from the effective date of the price increase. For metal products, prices are based on metal price indexes and if such indexes increase by more than 15%, a price increase will be required. Price quotations based on estimated or projected quantities are subject to increase in the event that actual quantities purchased during the specified period are less than the estimated or projected quantities.
4. **TAXES:** All prices are exclusive of all present or future federal, state and local excise, sales, use, value added and similar taxes. These taxes shall be paid by Buyer, or Buyer shall provide KAM with a tax exemption certificate acceptable to KAM and the taxing authorities.
5. **PAYMENT:** Unless KAM has extended credit to Buyer, Buyer shall pay KAM at KAM's option, either by: COD, letter of credit, sight draft or as otherwise approved in writing by KAM. Should KAM elect to extend credit to Buyer, payment shall be made in full within thirty (30) days of the date of the invoice. KAM reserves the right at any time to change the amount of or to withdraw any credit extended to Buyer. Each shipment shall be considered a separate and independent transaction and payment therefor shall be made accordingly. Past due invoices of KAM to Buyer shall bear interest at the rate of 1 ½ percent per month, but not in excess of the maximum lawful rate, until paid in full. Buyer shall be responsible for all costs and expenses incurred by KAM, including attorneys' fees and costs of collection or enforcement of any provision of this Agreement.
6. **TITLE AND DELIVERY:** KAM shall deliver Products to Buyer F.O.B. point of shipment. Partial deliveries shall be permitted. All shipping charges and expenses shall be paid by Buyer. Notwithstanding any request by Buyer, KAM may, without incurring any liability, exercise its own discretion in selecting the method of shipment and the carrier. All claims by Buyer for damage, loss or delays in transit shall be made by Buyer against the carrier, and KAM shall have no responsibility or obligations with respect to any such damage, loss, or delay. KAM WILL USE ITS REASONABLE EFFORTS TO FILL BUYER'S ORDERS IN A TIMELY MANNER. IT IS UNDERSTOOD, HOWEVER, THAT LEAD TIME REQUIREMENTS AND DELIVERY DATES WILL VARY ACCORDING TO MANUFACTURING AND OTHER CONDITIONS AND THAT ALL DELIVERY DATES ARE ONLY ESTIMATES. DELAY IN DELIVERY OF ANY SHIPMENT SHALL NOT RELIEVE BUYER OF ITS OBLIGATION TO ACCEPT SUCH SHIPMENT.

KAM shall have the right to charge Buyer a service fee when shipments are delayed awaiting customer shipping instructions. Buyer will have five (5) business days from the time KAM provides the necessary information (weights, dimensions, etc.) for Buyer to select a shipment method/carrier. On the 6th business day, KAM shall have the right to apply a 2% fee (on total invoice amount) per business day until the shipment is released per Buyer's instructions.
7. **FORCE MAJEURE:** KAM shall not be liable for delay or failure to deliver or perform due to any cause beyond its reasonable control, or for Acts of God, acts of Buyer, acts of any government authority, strikes or other labor disturbances, delays in transportation, fuel or energy shortages or inability to obtain necessary materials, components, services, or facilities from usual sources. In the event of such delay, the date of delivery shall be extended for a period equal to the time lost by reason of delay, and, if such delay is caused by act of Buyer or any of its representatives or agents, Buyer shall reimburse KAM upon invoicing for any additional costs arising from such delay.
8. **HELD ORDERS:** Any orders held, delayed or rescheduled at the request of the Buyer will be subject to the prices and conditions of sale in effect at the time of release of the hold or reschedule and shall reimburse KAM upon invoicing for any additional costs it incurs as a result of the hold, delay or reschedule. Any such order held, delayed or rescheduled beyond a reasonable period of time will be considered a Buyer termination.
9. **SPECIAL DOMESTIC OR EXPORT PACKING:** Prices include Products having standard domestic packing only. Buyer shall reimburse KAM upon invoicing for additional costs it incurs for any special domestic packing or packing for overseas shipment.
10. **MINIMUM FACTORY ORDER:** KAM will not accept an order of less than \$500 in value exclusive of transportation charges and taxes as indicated under "TITLE AND DELIVERY". The minimum billing for each line item ordered is \$250.
11. **PRODUCT NOTICES:** Buyer shall provide the user (including its employees) of the Product with all KAM supplied product notices, warnings, instructions, recommendations and similar materials.
12. **WARRANTIES AND REMEDIES:** (a) **WARRANTIES:** KAM warrants to Buyer that the Products shall be free from defects in material and workmanship and shall conform to the agreed upon specifications, if any, for a period of three months from the date of shipment: provided that, as a condition to this warranty, the Products shall have been stored, installed, operated and maintained in accordance with KAM instructions and recommendations and applied in accordance with standard industry practice. Products which are "engineering samples", are sold "AS IS", "WITH ALL FAULTS", and with no warranty whatsoever. The foregoing warranties shall not apply to Products that have been repaired other than with KAM's authorization and by KAM's approved procedures, that have been subjected to misuse, abuse, improper maintenance, negligence or accident, that have been damaged by excessive physical or electrical stress or that have had a serial number or any part thereof altered, defaced or removed.

(b) **REMEDIES:** Should any Products fail to such warranty, KAM, at its option, shall repair or replace such Products or issue Buyer a credit or a refund in the amount of the purchase price therefor; provided that (i) Buyer notifies KAM and gives KAM notice of such failure within thirty (30) days after discovery; (ii) the Buyer obtains a return material authorization from KAM prior to returning any defective Products; (iii) the defective Products are returned to the location specified by KAM at Buyer's cost; (iv) the defective Products are received by KAM no later than four (4) weeks following the last day of the warranty period; and (v) examination of such Products by KAM shall confirm the failure and that it has not been caused by improper installation, application, repair, alteration, accident or negligence. Products which KAM consents or directs in writing to be returned shall be returned to KAM, freight prepaid, in accordance with KAM standard return policies.

(c) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER

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WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The foregoing remedies set forth above are the Buyers exclusive remedies for claims (except as to title) based on defects in or failure of any Products whether a claim is based in contract, tort (including negligence and strict liability), warranty or otherwise and however instituted. Upon the expiration of the applicable warranty for any Products, all such liability shall terminate.

(d) The above warranties shall apply only to Buyer and shall not apply to Buyer's buyers or any other third parties

13. GENERAL LIMITATIONS OF LIABILITY:

(a) In no event, whether as a result of claims in contract, warranty, tort (including negligence and strict liability) or otherwise, shall KAM be liable for loss of profit or revenues, loss of goodwill claims of Buyers, loss of use, damages to or loss of other property or equipment, or INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER.

(b) THE REMEDIES OF THE BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, KAM'S LIABILITY, WITH RESPECT TO PRODUCTS ORDERED BY BUYER OR ANYTHING DONE IN CONNECTION THEREWITH OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, OR USE OF ANY PRODUCTS, WHETHER FOR CLAIMS IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE SHALL IN NO CASE EXCEED THE PRICE OF THE SPECIFIC PRODUCTS TO WHICH THE CLAIM RELATES.

14. PRODUCT APPLICATION: Products purchased from KAM are not to be used in critical safety systems (including without limitation medical devices, life support equipment and devices used for implementation into the body), any activity or process involving nuclear fission, fusion or in any other manner not considered a standard and ordinary commercial use. Buyer agrees not to use or sell or transfer the product to others for any such purpose without prior written authorization from KAM. If any such use occurs, KAM disclaims all liability and will in no event have any liability to Buyer or any third party for personal injury, death or property or other economic damage suffered. Buyer agrees to indemnify, defend and hold harmless KAM (and its employees, members, managers, officers, directors, subsidiaries, affiliates, successors, suppliers and agents) against any and all cost, damage or expense arising out of or related to such liability, including attorneys' fees

and costs. As used herein, "liability" means liability of any kind at any time whether in contract, tort (including negligence and strict liability), warranty or otherwise

15. PATENTS: (a) With respect to Products manufactured solely to KAM's designs and specifications, KAM shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that such Products infringe any US patent provided Buyer gives KAM prompt notice of such suit or proceeding, tenders the defense thereof to KAM and gives KAM complete authority, information and assistance, at Buyer's expense, in such defense. KAM shall pay all damages and costs finally awarded against Buyer in any such suit or proceeding, but shall not be responsible for any compromise thereof made by Buyer without its written consent. If such Products are held in such suit or proceeding to constitute infringement and their use is enjoined or if, in the opinion of KAM any Products are likely to become the subject of a claim of infringement, KAM may either (i) procure for Buyer the right to continue using such products; (ii) modify such Products so that they become non-infringing; (iii) replace such products with non-infringing Products; or (iv) accept the return of such Products, granting Buyer a refund equal to the purchase price.

(b) KAM shall have no liability to Buyer if any patent infringement or claim is based upon (i) a modification of the Products not approved by KAM; (ii) the interconnection or use of the Products in combination with other products or devices not made by KAM; or (iii) the use of Products in other than an application recommended by KAM. Buyer shall indemnify, defend and hold harmless KAM (and its employees, members, managers, officers, directors, subsidiaries, affiliates, successors, suppliers and agents) from all liabilities and costs, including attorneys' fees and costs, resulting from any suit or proceeding based any of the foregoing exclusions or upon a claim that Products infringe upon the rights of a third party to the extent such claim arises from KAM's compliance with Buyer's designs, specifications or instructions.

(c) The above states KAM's sole liability for infringement of patents by its Products.

16. REGULATORY REQUIREMENTS AND GOVERNMENT CONTRACTS: KAM makes no promise or representation that the Products will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by a duly authorized representative of KAM. If the Products are to be used in the performance of a government contract or subcontract,

no government requirements or regulations shall be binding upon KAM, unless specifically agreed to in writing.

17. CANCELLATION CHARGES: (a) Should Buyer cancel an order (or portion thereof) for standard Products, Buyer shall pay KAM cancellation charges within fifteen (15) days from the date of invoice therefor as follows:

100% of the price of standard Products cancelled within sixty (60) days of scheduled shipment date;

75% of the price of standard Products cancelled less than ninety (90) days, but more than sixty (60) days of scheduled shipment date; or

50% of the price of standard Products cancelled less than one hundred twenty (120) days but more than ninety (90) days of scheduled shipment date.

(b) Should Buyer cancel an order (or any portion thereof) for other than standard Products, Buyer shall pay KAM cancellation charges within fifteen (15) days from the date of invoice therefor in an amount equivalent to 100% of the price of such cancelled non-standard Products (regardless of when the cancellation occurs).

18. CHANGES AND DRAWINGS: KAM reserves the right to change or modify the specifications, design, drawings and construction of any Products and to substitute other suitable material. If drawings are furnished, they are submitted only to show general style and arrangement of the Products.

19. US EXPORT LAWS: KAM's obligations are subject to the export administration and control laws and regulations of the US Government. The Buyer shall comply fully with such laws and regulations in the export, resale or other disposition of Products. Unless otherwise agreed in writing by a duly authorized representative of KAM, Buyer shall be responsible for, at its own risk and expense, any necessary export license or permit and any other approval or documentation which may be required for or in connection with the export or any Products. Buyer shall indemnify, defend and hold harmless KAM (and its employees, members, managers, officers, directors, subsidiaries, affiliates, successors, suppliers and agents) from all liabilities, damages, costs and expenses, including attorneys' fees and costs, arising from or connected to any breach of Buyer's obligations under this paragraph. Buyer shall execute any documents reasonably required by KAM for the purpose of complying with US laws and regulations.

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- 20. NON-ASSIGNMENT:** Buyer may not assign any of its rights or interest under this Agreement or sale without the prior written consent of KAM and any such attempted assignment shall be void.
- 21. MISCELLANEOUS:** (a) The sale of Products by KAM to Buyer and any of legal issues arising under or with respect to these terms and conditions shall be governed by the laws of the State of North Carolina, without regard to its conflict of laws provisions, and each party hereto submits to the exclusive jurisdiction of any state of federal court sitting in Iredell County, North Carolina in any action or proceeding permitted under or related to this Agreement.
- (b) The invalidity, in whole or in part, of any provision herein shall not affect the validity of any other provision herein.
- (c) Any representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on KAM.
- (d) No modification, amendment, rescission, waiver or other change in these terms and conditions shall be binding on KAM unless agreed to in writing by an authorized KAM employee.
- (e) Procured Product may not necessarily be manufactured under a quality system which is registered to ISO 9001.
- (f) KAM and Buyer are independent contractors, and their relationship is not one of principal and agent. No act or obligation of either party is in any way binding upon the other party.
- (g) No failure by KAM to enforce at any time any provision of these terms and conditions of sale shall be construed as a waiver of KAM's right thereafter to enforce each and every such term and condition.
- (h) All notices and other written communications in connection with these terms and conditions shall be in writing and shall be sent by overnight courier service to a party at its address set forth on the reverse of this form, in the case of KAM to the attention of the General Manager or to such other address as may be specified by such party by notice in accordance herewith.
- KAM may terminate any obligation to Buyer with respect to the sale of the Products as set forth in these terms and conditions immediately by notice to Buyer if: (a) Buyer fails to make any payment on the date due or to accept delivery of any shipment; (b) Buyer makes an assignment for the benefit of creditors; (c) Buyer admits in writing its inability to pay its debts as they mature; (d) a trustee or receiver of all or a substantial part of Buyer's assets is appointed by any court; (e) any bankruptcy or reorganization proceedings is instituted by or against Buyer; (f) Buyer becomes insolvent or unable to pay its debts as they mature; or (g) KAM has reasonable basis for insecurity with respect to Buyer's performance of its obligations to KAM and Buyer fails to provide to KAM adequate assurance of Buyer's performance within thirty (30) days of KAM's demand for such assurance. KAM may also terminate any such obligation to Buyer on thirty (30) days' notice for any failure of Buyer to comply with any other of its obligations contained in these terms and conditions; provided that such failure shall not have been corrected during such thirty day period.
- (j) The headings contained in this Agreement are included for mere convenience of reference and shall not affect the interpretation of this Agreement.
- (k) Buyer agrees to indemnify, hold harmless and defend KAM (and its employees, members, managers, officers, directors, subsidiaries, affiliates, successors, suppliers and agents) from and against any and all claims (whether based on contract, tort, strict liability or otherwise), judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and attorneys' fees) incurred or suffered by KAM which relate to or arise out of (i) Buyer's or Buyer's customer use, handling, installation, sale, distribution or disposal of the Products, or (ii) Buyer's breach of any representation, warranty or obligation hereunder. Buyer shall defend any such matter with counsel reasonably acceptable to KAM and shall not settle any such matter except with the consent of KAM which consent shall not be unnecessarily withheld. If Buyer fails to promptly and diligently investigate and defend or settle any claim, then KAM shall have the right, at Buyer's cost, expense and risk, from that time forward to have sole control of the defense of the claim and the terms of any settlement or compromise.
- (l) Whenever the Buyer provides material to KAM, all nonconforming material or process waste material shall be disposed by KAM without reimbursement to the Buyer unless specified differently in the Buyer's purchase order.
- their directors, officers, employees and agents, directly or indirectly, to, offer, pay, promise to pay or authorize the payment of any money or give, offer, promise or authorize giving anything of value to (a) any Foreign Official (as hereinafter defined) or (b) any other person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a Foreign Official for the purpose of: (i) influencing any net or decision of such Foreign Official in his or her official capacity, including a decision to fail to perform his official functions; or (ii) inducing such Foreign Official to use his or her influence with a government or instrumentality to affect or influence any act or decision of such government or instrumentality, in order to assist in obtaining or retaining business for or with, or directing business to, any person. For purposes of this provision, the term "Foreign Official" means any officer or employee of a government or any department, agency, or instrumentality thereof, or any corporation or other entity controlled thereby or any person acting in an official capacity for or on behalf of any such government, department, agency, instrumentality, corporation or other entity, or candidate for political office, or any officer, employee or agent thereof.
- 22. Foreign Corrupt Practices Act Contract Provision, Compliance with Laws/No Unlawful Payments:** In the performance of this Agreement, Buyer shall comply with all applicable laws, rules and regulations, including but not limited to the United States Foreign Corrupt Practices Act. Buyer agrees it will not, and will not permit its subsidiaries, affiliates, and all of its and