



## GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

### 1. Applicability.

These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by TK USA CORP. ("**Seller**"), to the buyer named on the order confirmation or similar document ("**Buyer**").

(a) The accompanying written confirmation of sale (the "**Sales Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

### 2. Order procedure

Buyer shall issue all purchase orders to Seller in written form via facsimile, e-mail, or mail. By placing an order, Buyer makes an offer to purchase Goods. Buyer's purchase orders may be preceded by Seller's quotation which, under no circumstances, shall be considered an offer to sell Goods.

(a) Seller may, in its sole discretion, accept or reject any purchase order. Seller may accept any order by issuing a Sales Confirmation or by delivering the Goods, whichever occurs first. If Seller does not accept the order under the terms of this Section 2(b) within ten (10) days after Seller's receipt of the purchase order, the purchase order will lapse. No order is binding on Seller unless accepted by Seller as provided in this Agreement.

### 3. Delivery.

The Goods will be delivered within a reasonable time indicated in the Sales Confirmation, subject to availability of production capacity.

(a) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods at Buyer's facility at the address indicated in writing by the Buyer in the purchase order (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall be deemed to have taken delivery of the Goods when the Goods are delivered at the Delivery Point.

(b) Notwithstanding Section 3(b) above, if Buyer and Seller agree in writing that the Goods will be delivered at Seller's, or its affiliates', facility, wherever located, even outside the territory of the United States ("**Seller Delivery Point**"), Buyer shall take delivery of the Goods within three (3) days of Seller's written notice that the Goods have been delivered and Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at Seller Delivery Point. Subject to Section 4 below, Seller shall not be liable for any delays, loss or damage in transit.



(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(e) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed at the Delivery Point or at Seller Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point or at Seller Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its sole discretion, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

(f) **Liquidated Damages for Delay in Delivery.** If Buyer incurs costs due to delay in delivery attributable to Seller, other than as a result of a delay caused by Seller's suppliers, Buyer shall only be entitled to damages caused by such delay. Seller agrees that it will be liable to Buyer for payment of Buyer's delay liquidated damages if Seller fails to deliver the Goods by the delivery date for reasons exclusively attributable to Seller. Buyer's delay damages will begin to accrue on the first day immediately following the period of three (3) weeks after the missed date. The agreed amount of liquidated damages is 0.1% of the Price of the Goods being delayed for each full week of delay. Seller further acknowledges the reasonableness of the stated amount and agrees that the imposition of liquidated damages will in no way be construed as a penalty provision. Liquidated damages for delay shall in no case altogether exceed three percent (3%) of the Price of the Goods being delayed. PAYMENT OF LIQUIDATED DAMAGES FOR DELAY SHALL BE FINAL AND IN FULL SATISFACTION OF SELLER'S LIABILITY FOR SUCH DELAY AND ALL FURTHER CLAIMS OF BUYER DUE TO SUCH DELAY.

#### 4. Non-Delivery.

The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within five (5) days after the time that the Goods would in the ordinary course of events have been received.

(a) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

#### 5. Buyer's Acts or Omissions.

If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.



6. Quantity.

If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

7. Shipping Terms.

International delivery shall be made DDP – Incoterms 2020 Delivery Point, unless otherwise agreed in writing by the parties. In the event described in Section 3(c), Delivery shall be made EXW – Incoterms 2020 Seller Delivery Point, unless otherwise agreed in writing by the parties, unless otherwise agreed in writing by the parties.

8. Title and Risk of Loss.

Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point or Seller Delivery Point, as applicable.

9. Retention of Title.

In case Buyer does not pay the Price, Seller shall be entitled to take possession of the Goods already delivered to Buyer, but not paid for. Buyer hereby grants to Seller a first priority security interest in the Goods until the Price has been paid in full. Seller shall have the right to file a UCC-1 Financing Statement to perfect a security interest on all or any portion of the Goods, at any time.

10. Inspection and Rejection of Nonconforming Goods.

Buyer shall inspect the Goods within two (2) days after receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product presents material defects in material and workmanship.

(a) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility indicated in writing by Seller. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer the replaced Goods to the Delivery Point.

(b) Buyer acknowledges and agrees that the remedies set forth in Section 10(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 10(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

11. Price.

Buyer shall purchase the Goods from Seller at the price (the "**Price**") set forth in the Sales Confirmation. If the Price should be increased by Seller before delivery of the Goods due to



increases to raw materials or shipment costs of greater than ten percent (10%), then these Terms shall be construed as if the increased price were originally agreed between the parties, and Buyer shall be billed by Seller on the basis of such increased price.

(a) With the exclusion of the events described in Section 3(c), all Prices are inclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority applicable in, measured by or imposed upon or with respect to this transaction; provided, however, that Seller shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, sales, gross receipts, personnel or real or personal property or other assets.

12. Payment Terms.

Buyer shall pay all invoiced amounts due to Seller within the date indicated on the invoice.

(a) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for five (5) days following written notice thereof.

(b) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

13. Limited Warranty.

Seller warrants to Buyer that for a period of one (1) year from the date of delivery of the Goods at the Delivery Point or Seller Delivery Point, as applicable ("**Warranty Period**"), that such Goods will be free from material defects in material and workmanship. The warranty does not cover ordinary wear and tear or consumable items.

(a) EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 12(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

(b) The Seller shall not be liable for a breach of the warranties set forth in Section 12(a) unless: (i) Buyer gives written notice of the defective Goods reasonably described to Seller within fourteen (14) days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Seller is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 12(a) to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.



(c) The Seller shall not be liable for a breach of the warranty set forth in Section 12(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) 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 (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(d) Subject to Section 12(c) and Section 12(d) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate; provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

(e) THE REMEDIES SET FORTH IN SECTIONS 12(E) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTIONS 12(A).

14. Limitation of Liability.

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR ENHANCED DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST OF PROFITS OR REVENUES, LOSS OF BUSINESS OPPORTUNITY, OR DIMINUTION IN VALUE, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(a) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE PRICE PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

(b) Buyer shall indemnify, defend and hold harmless Seller, and its officers, directors, employees and agents from and against any losses, liabilities, damages, demands, obligations, fines or civil penalties, expenses, costs, and fees (including, but not limited to, court costs and reasonable attorney's fees) of whatsoever kind and nature (collectively, "Losses"), imposed on, incurred by, or asserted against, Seller, its officers, directors, employees and agents, in any way relating to or arising out of (a) Buyer's failure to follow Seller's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Goods; (b) Buyer's alterations or repairs of Goods without the prior written consent of Seller (c) the use, operation, possession or disposition of the Goods by Buyer, (d) the willful misconduct or negligence of Buyer or any of its officers, directors, employees or agents, or (e) the negligence of Buyer or any of its officers, directors, employees or agents, to the extent that Losses are caused by such negligence.

15. Insurance.

During the term of this Agreement and for a period of one (1) year thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not



limited to, commercial general liability (including product liability) in a sum no less than \$2,000,000.00 with financially sound and reputable insurers.

16. Compliance with Law.

Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

17. Termination.

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

18. Waiver.

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. Confidential Information.

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by 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 use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

20. Force Majeure.

Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond Seller's control, including, without limitation, and only by way of example, the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake, or



explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national, regional or local emergency, including pandemic or epidemic events or other health emergencies; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; (i) cyber-attacks; and (j) other events beyond the control of Seller. Seller shall give notice within 30 days of the Force Majeure Event to Buyer, stating the period of time the occurrence is expected to continue. Seller shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. Seller shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that Seller's failure or delay remains uncured for a period of 180 consecutive days following written notice given by it under this Section 20, either party may thereafter terminate this Agreement upon 30 days' written notice without liability whatsoever to the other party.

21. Suspension of Agreement.

Seller shall have the right to suspend this Agreement in extraordinary events beyond the reasonable control of Seller, including, without limitations, plague, epidemic, pandemic, outbreaks of infectious or viral disease or any other public health crisis without liability and upon written notice to Buyer as Seller determines to be necessary or appropriate: (A) for the health and safety of the Seller's employees or contractors, including without limitation: (i) to comply with any shelter-in-place, quarantine requirements, social distancing, travel restrictions, or any other order, instruction, or request of any government, public health, or emergency service organization, or other competent authority; or (ii) due to shortages or unavailability of personnel or personal protective equipment; (B) as a consequence of economic downturn, business interruption, or cash-flow difficulties, including without limitation, adjustments in payments from lenders or investors; or (C) as a consequence of supply chain disruptions, including without limitation, labor and material shortages. Seller shall have the right to suspend this Agreement pursuant to this Sections 21 whether or not the events listed herein qualify as a Force Majeure Event under Section 20.

22. Assignment.

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

23. Relationship of the Parties.

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. No Third-Party Beneficiaries.

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, expressed or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.



25. Governing Law.

All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of North Carolina.

26. Arbitration.

Any dispute between the Parties arising out of this Agreement shall be submitted to final and binding arbitration in the City of Charlotte, North Carolina, USA, under the Commercial Arbitration Rules of the American Arbitration Association then in effect, upon written notice and demand of any Party therefor. The arbitration shall be conducted by one (1) arbitrator, in the English language. Any arbitration award rendered shall be binding, final and conclusive upon all parties, and judgment thereon may be entered in any Court having jurisdiction thereof. The prevailing party shall be entitled to recover reasonable attorney's fees and costs from the other party.

27. Notices.

All notices, request, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, internationally recognized courier (with all fees pre-paid), facsimile (with confirmation of transmission), certified or registered mail (in each case, return receipt requested, postage prepaid), or email. Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

28. Severability.

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

29. Survival.

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Arbitration, and Survival.

**TK USA Corp.**  
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