

# Standard Terms & Conditions of Purchase

- 1. APPLICABILITY / SCOPE:** Acceptance of any Order by Seller is limited to acceptance of the express terms and conditions set forth herein. Any general terms and conditions of Seller are hereby expressly rejected by Kemco and excluded. Notwithstanding any language contained in any document of Seller stating the language of such document, or any other document referenced therein supersedes any other language, if the Seller chooses to accept an Order, Seller specifically acknowledges and agrees these Purchase Terms control. Any proposal, confirmation, or any other writing of whatever kind inconsistent with, or in addition to, the terms of the Order and these Purchase Terms shall not be binding upon Kemco. Kemco's acceptance of, or payment for, Goods and/or Services will not constitute acknowledgement or acceptance of the Seller's conditions of sale.
- 2. PRICING / PAYMENT:** The price to be paid by Kemco shall be fixed and final in US dollars (not subject to exchange rate fees) as mutually agreed upon by the parties and set forth in an appropriate writing. Unless otherwise agreed to, prices quoted are inclusive of any state or local sales or use tax, special fees, duties or custom fees, freight and handling charges, and export crating costs that may be added to the price at invoicing. Seller warrants that the prices for the Goods and/or Services sold to Kemco under any Order are as favorable as those currently offered to Seller's customers for the same or similar Goods and/or Services in similar quantities and type in compliance with all pricing laws and regulations. Kemco shall have no obligation to pay any amounts that Seller fails to invoice to Kemco within 120 days after the amounts were incurred. Except as required by applicable laws, Kemco shall not be required to pay any late charge, surcharge, interest, finance charge or similar charge. Kemco shall have the right to deduct or set-off amounts owed by Seller or any of Seller's affiliates to Kemco against amounts payable under any Order.
- 3. DELIVERY:** Unless otherwise mutually agreed upon: (a) all goods shall be supplied hereunder and delivered in operational and workable condition within the United States shall be shipped FOB Destination, Kemco; (b) all goods to be supplied hereunder and delivered outside the United States shall be shipped DDP in accordance with the applicable provisions of the Incoterms 2010; (c) title to and risk of loss of the Goods, including but not limited to any shipping and transit costs, will pass to Kemco upon the delivery of the Goods to Kemco, provided that in the event the Goods are Non-Conforming Goods as defined herein, title to and risk of loss of such Non-Conforming Goods shall remain at all times with Seller unless Kemco agrees in writing to accept such Non-Conforming Goods; (d) for all shipments not accompanied by a bill of lading, packing slip or similar delivery document, Kemco's count and/or weight will be conclusive; (e) Seller represents and warrants to Kemco that the title conveyed on all Goods produced pursuant to any Order will be good and marketable, its transfer rightful, and the Goods will be delivered free from any security interest or other lien or encumbrance (including any statutory or common law lien); and (f) time shall be of the essence. If the Goods are not adequately delivered on the due date, in addition to its other rights and remedies, Kemco may (i) terminate the Order in whole or in part without liability by notice effective when received by Seller as to Goods not yet delivered, (ii) refuse to accept any subsequent delivery of the Goods which Seller attempts to make, (iii) recover from Seller any expenditure reasonably incurred by Kemco in obtaining the Goods in substitution from another provider, or (iv) claim damages for any additional costs, losses or expenses incurred by Kemco which are in any way attributable to Seller's failure to adequately deliver the Goods on the due date.
- 4. ACCEPTANCE:** An Order shall be deemed accepted by Seller upon the earliest of (a) Seller issuing an electronic confirmation or written acceptance of the Order, (b) Seller's commencement of work on the Goods and/or Services subject to the applicable Order, or (c) shipment of the Goods and/or delivery of the Services subject to the applicable Order. Kemco shall have the right, but not the obligation, to inspect and/or test Goods purchased under any Order and reject, in whole or in part, any or all of the Goods contained therein. Nothing contained in any Order or any confirmation or related documents sent by Seller shall relieve Seller from the obligations of testing, inspection, and quality control.
- 5. WARRANTY:** Seller expressly warrants and represents to Kemco, its successors, assigns, customers, and users of Kemco products, that all Goods furnished under any Order shall (a) conform in all respects to all samples, specifications and appropriate standards, (b) meet all performance specifications or guarantees provided either orally or in writing to Kemco, (c) be new, and free from defects in design, materials or workmanship, (d) conform to any statements made on the containers, labels, and/or advertisements, (e) be properly contained, packaged, marked, and labeled, (f) not infringe or misappropriate any patents, copyrights, trademarks, trade names, trade secrets or other intellectual property rights, and (g) be merchantable, safe and appropriate for the purpose(s) for which Goods of that kind are normally used. In addition, if Seller knows or has reason to know the particular purpose for which Kemco intends to use the Goods, Seller warrants that such Goods will be fit for such particular purpose. Inspection, test, acceptance or use of the Goods furnished under any Order shall not affect Seller's obligation under this warranty, and all warranties shall survive inspection, test, acceptance and use. Warranty period shall be (i) 18 months from date of installation or 28 months from receipt; whichever is later; (ii) where any product or part thereof that has been repaired, or replaced by Seller, the additional Warranty Period applicable to such product shall be extended so that it expires 13 months after the completion of such warranty work, unless the remaining part of the original Warranty Period is longer; (iii) for services, the warranty period shall be twelve (12) months from the date on which Seller completes the services. In the event that any failure of the Goods to comply with the warranty given arises within the warranty period, the Seller shall immediately, on receipt of written notification of such failure from Kemco, take all necessary steps to rectify such failure at its own account. Kemco shall give written notification of any such failure as soon as reasonably practicable after becoming aware of the defect or deficiency in question. In addition to its obligations above, Seller shall indemnify Kemco against the cost of any failure of the product to comply with the requirements of the warranty given, including the cost of identifying such failure and facilitating its repair, replacement or re-performance including costs both directly and indirectly associated with removing and reinstalling the product. Should Seller fail to correct defective or deficient product within a reasonable time of being called upon to do so, Kemco may, at its option, remove and correct (whether by repair, re-performance or replacement) such defective or deficient Goods at the Seller's expense.
- 6. EXPORT-IMPORT REGULATIONS:** Seller will prepare, maintain and, to the extent required under applicable laws, rules or regulations promulgated by any governmental or self-regulatory agency having jurisdiction over a party, submit to the applicable customs authorities, all necessary information and documentation to comply with the applicable customs and export and import requirements of each country from which the Goods will be exported and each country into which they will be imported.
- 7. LIMITATION OF LIABILITY / DAMAGES:** In no event shall Kemco be liable to Seller for any indirect, incidental, consequential, punitive, special, or exemplary damages or penalties of any description, regardless of the form of the action or the theory of recovery, even if Kemco has been advised of the possibility of those damages. Kemco's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from any Order, or from the performance or breach thereof, shall in no case exceed the price allocable to the Goods and/or Services which gives rise to the claim. Any action resulting from any breach on the part of Kemco as to the Goods and/or Services purchased under any Order must be commenced within six (6) months after the cause of action has accrued. This Section 7 is not intended to limit or exclude Kemco's liability for any matter for which liability cannot be limited or excluded by law.
- 8. BREACH:** In addition to any failure to comply with any other terms as set forth herein, the occurrence of any of the following events shall constitute a breach on the part of Seller: (a) If Seller shall become insolvent or make a general assignment for the benefit of creditors; (b) If a petition under the Bankruptcy Act is filed by or against Seller; (c) If, at any time Seller fails to fulfill its obligations under the terms and conditions hereof, or acts in such a manner as to endanger performance of such obligations; (d) If Kemco shall reasonably believe that Seller will not timely fulfill its obligations or otherwise perform hereunder, and Seller is unable to provide reasonable assurances that such timely performance will occur. Upon breach by Seller, Kemco may terminate the contract or agreement by giving notice to the Seller. Such termination shall be effective immediately. In the event of a breach and contract termination, Seller is responsible for all costs incurred by Kemco.
- 9. INDEMNIFICATION:** Seller shall defend, indemnify and hold harmless Kemco, including its parents, subsidiaries, sisters and other affiliated companies and each of their respective directors, officers, employees, and agents from and against any and all claims, demands, actions, losses, damages, penalties, liabilities, costs, obligations, and expenses (including reasonable attorneys', experts' and legal fees) arising out of or resulting in any way from any act or omission of Seller (its agents, employees or subcontractors, in whole or in part) in performing work in connection with any Order, including but not limited to (a) Seller's breach of these Purchase Terms and/or any Order, (b) the actual or alleged infringement or misappropriation of any patent, copyright, trademark, trade name, service mark, trade secret, or other intellectual property right, (c) violation of any law or regulation of Seller,

(d) any claim that the Goods and/or Services are defective, and (e) any claim that Kemco has or had a duty to warn a third party with respect to the Goods and/or Services. This indemnity shall be in addition to the warranty obligations of Seller. Seller shall be liable for special damages, punitive, indirect or consequential damages, or losses such as, but not limited to, loss of profits, loss of revenues, income, use, production, cost of capital, or business interruption costs. If the Seller is comprised of two or more persons or an association thereof, each and every one of them is jointly and severally liable for the obligations established therein.

10. **CONFIDENTIAL & PROPRIETARY INFORMATION:** Subject to the terms of any confidentiality agreement with Kemco, Seller shall consider the information related to any Order and all information furnished by Kemco, including but not limited to any drawings, specifications, and/or other documentation prepared by Seller for Kemco in connection with any Order, to be confidential (collectively the "Confidential Information") and shall not disclose any such Confidential Information to any other person or entity, or use such Confidential Information itself for any purpose other than performing the applicable Order unless Seller obtains written permission from Kemco to do so. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Kemco shall be deemed secret or confidential. Seller's confidentiality obligations pursuant to this Section 10, as applicable will survive (a) perpetually for trade secrets and personally identifiable information and (b) for a period of five (5) years from the date of Kemco's disclosure for all other Confidential Information. Seller will return or destroy any Confidential Information promptly upon Kemco's request. If Kemco so requests, Seller will provide a certificate, signed by an authorized representative, certifying that all confidential information has been returned or destroyed.
11. **ASSIGNMENT:** Seller may not assign any rights or delegate any obligations under these Purchase Terms or any Order without the prior written consent of Kemco. In no event shall any such approval of assignment relieve the Seller of any of its obligations to Kemco
12. **NON-WAIVER:** The parties' failure to demand strict performance or to otherwise enforce any rights hereunder shall not constitute a waiver of any rights hereunder. No claim arising out of a breach hereof may be discharged in whole or in part by a waiver of the claim unless supported by consideration and set forth in a writing signed by the waiving party. Any such waiver shall apply to the specifically identified claim only, and shall in no way constitute a waiver or discharge of any other prior or subsequent claim.
13. **CANCELLATION/TERMINATION:** (a) Kemco reserves the right to terminate any Order for convenience, in whole or in part, at any time. Upon notification by Kemco, Seller shall immediately stop all work and shall immediately cause any of its suppliers and/or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the applicable Order price reflecting the percentage of the work performed prior to the notice of termination. Seller shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by Seller's suppliers and/or subcontractors which Seller reasonably could have avoided. Notwithstanding the foregoing, in no event shall Seller be entitled to an amount greater than what Kemco would have paid absent the termination. (b) Kemco may terminate any Order, in whole or in part, in the event of (i) any default by Seller, (ii) Seller's failure to comply with these Purchase Terms, or (iii) Seller's failure to comply with any specific terms and conditions contained in an applicable Order. Late deliveries, deliveries of Non-Conforming Goods and/or performance of non-conforming Services, and/or failure to provide Kemco, upon request, reasonable assurances of future performance, shall all be bases for Kemco's right to termination for cause. In the event Kemco terminates an Order for cause, Kemco shall not be liable to Seller for any amount, and Seller shall be liable to Kemco for any and all damages sustained by reason of Seller's default which gave rise to the termination. (c) Kemco may terminate any Order, in whole or in part, as of the date specified in a termination notice if Seller (i) files for bankruptcy, (ii) becomes or is declared insolvent, (iii) is the subject of any proceeding(s) (not dismissed within 30 days) related to its liquidation, insolvency or the appointment of a receiver or similar officer for Seller, (iv) makes an assignment for the benefit of all or substantially all of its creditors, (v) takes any corporate action for its winding-up, dissolution, or administration, (vi) enters into an agreement for the extension or readjustment of substantially all of its obligations, or (vii) makes any material misstatement as to its financial condition.
14. **APPLICABLE LAW / DISPUTES:** It is the expectation of the parties that any disputes arising hereunder will be amicably resolved by mutual agreement of the parties. Any dispute, involving the supply of goods or services within the United States, which cannot be amicably resolved by the parties, shall be submitted to binding arbitration in accordance with the applicable rules and regulations of the American Arbitration Association. The substantive law of Florida shall apply to any such arbitration, which shall be conducted in Clearwater, Florida. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the parties shall share equally the fees and expenses of the American Arbitration Association and the arbitrator
15. **FORCE MAJEURE:** Neither party shall be liable for any failure or delay in its performance resulting from any cause beyond its reasonable control including, but not limited to, acts of God; acts or omissions of civil or military authority; fires; floods; unusually severe weather; strikes or other labor disputes; embargoes; wars; political strife; riots; delays in transportation; sabotage; or fuel, power, material or labor shortages.
16. **ENTIRE AGREEMENT:** These Purchase Terms and the applicable Order collectively constitute the entire agreement of the parties. Notwithstanding the foregoing, in the event Kemco and Seller have an existing written agreement signed by an authorized signatory of Kemco and Seller encompassing the Goods and/or Services purchased in the Order, these Purchase Terms shall remain in full force and effect to the extent they do not conflict with the terms of such written agreement.