

KWG Industries, L.L.C
Sale Terms and Conditions

The following terms and conditions apply to KWG's provision of goods ordered by Buyer. Any additional or conflicting terms included in Buyer's purchase order are hereby rejected.

Offer and Acceptance. KWG's commencement of work on the goods subject to Buyer's purchase order shall be deemed an effective mode of acceptance of Buyer's purchase order, but subject to the terms and conditions set forth herein, unless Buyer, within a commercially reasonable time after Buyer becomes aware, or should have become aware, of KWG's commencement of work on the goods herein, notifies KWG in writing that Buyer objects to and rejects the terms and conditions in this document. Once these terms and conditions are deemed accepted by Buyer, this agreement may be canceled only with KWG's written consent and upon terms that will indemnify KWG against any and all loss.

Quotations and Prices; Other Charges. Unless separately agreed by KWG, prices are subject to change without notice and subsequent purchase orders calling for future delivery will be billed according to the price in effect at the time of delivery. Written quotations automatically expire 30 calendar days from the date issued and are subject to termination by notice within that period. Unless otherwise separately agreed by KWG, prices quoted or referred to herein shall not include any charges for freight, transportation, custom duties, tariffs, import or other taxes, insurance or any other charges relating to the transportation and shipment to or use by Buyer of the products sold under this agreement. Such charges and/or taxes shall be the sole responsibility of and shall be borne exclusively by Buyer. Wherever applicable, any such charges and/or taxes will be added to the invoice as a separate charge to be paid by the Buyer. If KWG is required to pay any such charges and/or taxes, Buyer agrees to reimburse KWG for any amounts so paid upon demand.

Payment Terms. KWG shall bill the Buyer for all purchases made under this agreement by invoice sent to Buyer at Buyer's address shown on Buyer's purchase order. All invoices submitted by KWG to Buyer shall be payable net within thirty (30) days after the date of the said invoices. All payments due to KWG hereunder shall be paid in United States dollars to KWG, or to such entity or person as is designated by KWG in accordance with the remittance instructions contained in the invoice. If payment is not received within the prescribed period, interest shall accrue on any unpaid balance from its due date until payment is made at the rate of one and one half percent (1.5%) per month or the highest interest rate allowable by law, whichever is less. If in KWG's opinion the financial condition of the Buyer at any time does not justify continuance of production or shipment on the terms of payment specified herein, KWG may require full or partial payment in advance. Buyer's payment obligations set forth in this paragraph shall survive termination of this agreement.

Shipment and Delivery. This offer is made with the understanding that it is subject to the KWG's ability to obtain the raw and /or prime materials necessary to manufacture or supply the goods hereunder. Unless separately agreed by KWG, all goods shall be delivered F.O.B. at KWG's location in Hillsborough, New Jersey. Unless separately agreed by KWG, all shipments shall be packaged in accordance with KWG's standard packaging. KWG will endeavor to meet all scheduled dates indicated on the Buyer's purchase order or otherwise requested by Buyer; however, all shipments are subject to KWG's availability schedule. Method and route of shipment are at KWG's discretion, unless Buyer supplies explicit written instructions. Unless otherwise indicated herein, all shipments are insured at Buyer's expense and made at Buyer's risk. Identification of the goods to the contract shall occur as each shipment is placed in the hands of the carrier. KWG shall not be liable for its failure to meet the quoted delivery date(s) or for any delays or for any consequence of any delays in performance hereunder due to causes beyond its reasonable control, including but not limited to delays caused by acts of God or the public enemy, valid law, acts or requests of any national or provincial government, or of any national or provincial officer or agent purporting to act under duly constituted authority, wars, floods, fires, storms, strikes, lockouts, delivery of nonconforming or defective material, supplies or equipment, interruptions of transportation, freight embargoes or failures, exhaustion or unavailability of the open market or delays in delivery of material, supplies, equipment, or services necessary for the performance of any provision hereof, or happening of any unforeseen acts, misfortune, or casualty by which performance hereunder is delayed or prevented. If any such delay occurs, then (unless the cause thereof shall frustrate or render impossible or illegal the performance of this contract or shall otherwise discharge the same), the KWG's period for performing any obligations hereunder (including deliveries) shall be extended by such period (not limited to the length of the delay) as KWG may reasonably require to complete the performance of such obligation. Nondelivery by KWG as to any product shall not be deemed a breach of this agreement. Any non-delivery shall not relieve Buyer from its obligation to accept or be responsible for any subsequent or prior shipment. Shipments made within thirty (30) days after specified date of delivery shall constitute a good delivery. Orders will be considered complete upon shipment of a reasonable quantity over or under the amount specified in the order when it is impractical to produce the exact quantity ordered. Normal tolerances in specifications shall be acceptable. Any delivery not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered merchandise.

Title and Risk of Loss; Security Interest. Title to and risk of loss and damage for any shipment of goods shall pass to Buyer immediately upon delivery of such shipment to Buyer or its designated agent or upon deposit with a common carrier in accordance with Buyer's instructions, whichever occurs first. KWG shall retain a security interest in the goods shipped to Buyer until the entire balance of the price of such goods and all other monies then due are paid in full. Buyer shall execute, upon request by KWG, financing statements deemed necessary or desirable by KWG to perfect its security interest in all goods shipped which have not been paid for in full. In the event Buyer defaults on any payment or makes an assignment for the benefit of creditors, or if a proceeding in insolvency or bankruptcy is initiated by or against the Buyer, whether voluntary or involuntary, KWG shall have the right to withhold shipments, in whole or in part, and to recall goods in transit, retake same, and remove and/or repossess goods which may be stored with the KWG for the Buyer's account, without the necessity of taking any other proceedings and to take such other action as may be necessary to protect its security interest, including any other remedies KWG may have by operation of law or otherwise.

Limited Warranty. KWG warrants that the products supplied hereunder shall conform at the time of delivery to the written specifications accepted by the KWG, if any. SELLER'S SOLE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR A BREACH OF THIS WARRANTY SHALL BE, AT SELLER'S SOLE OPTION, CREDIT OR REPLACEMENT OF THE NONCONFORMING PRODUCT. FURTHERMORE, THE WARRANTY STATED HEREIN SHALL BE NULL AND VOID AND SHALL NOT APPLY TO ANY PRODUCT WHICH IS (I) ALTERED, MODIFIED, DAMAGED OR REPAIRED BY ANY PERSON OTHER THAN SELLER (II) ABUSED OR MISUSED, WHETHER INTENTIONALLY OR ACCIDENTALLY OR (III) NOTWITHSTANDING ITS NONCONFORMITY, IS USED OR OTHERWISE ACCEPTED BY BUYER OR BUYER WAIVES ITS CLAIM FOR REJECTION UNDER THE PROVISIONS OF THIS AGREEMENT. THE FOREGOING WARRANTY SET FORTH IN THIS PARAGRAPH IS IN LIEU OF ALL OTHER WARRANTIES, AND SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE AND/OR PARTICULAR PURPOSE. SELLER SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, ANY LOST REVENUES OR PROFITS OF BUYER OR ITS CUSTOMERS, AGENTS, AND DISTRIBUTORS, RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH, ANY SALE, MANUFACTURE, DISTRIBUTION OR ANY USE OF ANY GOODS OR FOR ANY FAILURE OF SUPPLY OF ANY GOODS FOR ANY REASON, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

Acceptance; Rejection. Expect as provided in this paragraph, Buyer shall accept all goods shipped in accordance with the terms and conditions of this agreement. Buyer may reject any shipment of any goods to the extent such shipment does not conform in any material respect with the written specifications accepted by KWG, if any. In order to reject a shipment, Buyer must give written notice to KWG within ten (10) days after receipt of the shipment, together with a reasonably detailed written statement of its reasons for rejections. If no such notice is received, then Buyer shall be determined to have accepted the shipment of the goods. In no case shall Buyer return goods without first obtaining KWG's permission in writing. KWG shall, within a reasonable period of time, notify Buyer whether it accepts Buyer's assertions of nonconformity. If KWG disagrees with any alleged nonconformity by Buyer, then an independent party mutually agreed upon by the parties shall analyze an aliquot sample from Buyer's shipment, as may be necessary to substantiate whether the goods rejected by Buyer conformed in all material respects to the specifications accepted by KWG therefore. Both parties agree to cooperate with the independent party's reasonable requests for assistance in connection with its analysis hereunder. Both parties shall be bound by the independent party's results of analysis. The costs incurred by the party's shall be borne by the losing party. If KWG or the independent party confirms the nonconformity, KWG shall, at its sole option, replace (if it has not already done so) the nonconforming goods with conforming products as promptly as reasonably possible or credit to Buyer the purchase price therefor. Replacement shipments shall also be subject to the procedures contained in this agreement.

Indemnification. Buyer shall indemnify KWG and defend and hold KWG harmless from and against any and all liability, damages, loss, claims, cost and expenses (including, without limitation, reasonably attorneys' fees and costs of litigation) incurred and/or paid by KWG resulting from or arising out of or in connection with (a) any breach by Buyer of its obligations or representations made under this agreement and (b) any representation or warranty made to any third party by Buyer, its affiliates, agents, distributors or employees which is not expressly authorized by KWG in writing, and (c) any act, or omission to act, of Buyer or any of its affiliates, agents, distributors, contractors or employees not covered by (a) or (b) above. If any goods and/or material shall be manufactured and/or sold by the KWG to meet the Buyer's particular specifications or requirements and is not part of the KWG's standard line offered by it to the trade generally in the usual course of the KWG's business, the Buyer agrees to defend, protect, and hold the KWG harmless against all suits at law or in equity and from all damages, claims, and demands, for actual or alleged infringements of any United States or foreign patent and to defend any suit or actions which may be brought against the KWG for any alleged infringement because of the manufacture and/or sale of the material covered thereby.

Confidentiality. Buyer shall consider all information received from KWG to be confidential and shall not disclose any such information to any other person or use such information itself for any purpose other than performing this contract without KWG's written consent. This paragraph shall apply to drawings specifications and other documents prepared by KWG for Buyer in connections with Buyer's order. Buyer shall not publish or disclose any information relating to this agreement without KWG's written permission.

Any information furnished to Buyer from KWG pursuant to this agreement, including without limitation, samples, drawings and materials, shall remain the property of KWG, shall be held at Buyer's risk and shall be returned upon completion of the work, and no disclosure or reproduction thereof in any form be made without KWG's prior consent in writing. The confidential/non-disclosure obligations and other representations and obligations set forth in this paragraph shall survive termination of this agreement.

Insurance. Buyer agrees to carry and maintain at all times after this sale products liability insurance in good and sufficient amounts to cover products liability claims with respect to all products which are subject to this agreement, and will if requested to do, furnish the KWG with proper evidence of such coverage.

Subcontracting and Assignability. This agreement and the performance of any obligations hereunder, may not be assigned by a party hereto without the prior written consent of the other party, but shall binding upon and inure to the benefit of and be enforceable by the parties hereto and any permitted successors, assignees, and legal representatives; provided, however, that KWG shall be entitled to assign its obligations under this agreement, without the prior written consent of Buyer, to any corporation with controls, is controlled by, or is under common control with KWG, or to any corporation which succeeds as a going concern to the business presently conducted by KWG.

Severability. If any part of this agreement shall be held unenforceable, the remainder of the agreement shall nevertheless remain in full force and effect.

Relationship of the Parties. All parties are independent contractors under this agreement. Nothing contained in this agreement is intended nor is to be construed so as to constitute the parties as partners or joint ventures with respect to this agreement. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party to any other contract, agreement or undertaking with any third party.

Governing Law; Forum; Enforcement. The interpretation and/or performance of this agreement shall be construed in accordance with and governed by the laws of the State of New Jersey and the Uniform Commercial Code as enacted herein. All disputes arising out of this agreement shall be resolved by a court or competent jurisdiction in the State of New Jersey and both parties hereby consent to the jurisdiction of the courts of the State of New Jersey and the Federal District Court for the District of New Jersey. KWG and Buyer hereby waive and exclude the application of the U.N. Convention of Contracts for the International Sale of Goods in the interpretation and enforcement of this agreement. In the event KWG takes or maintains any action to enforce its right hereunder and prevails and/or obtains a successful result thereafter, Buyer shall reimburse KWG for its reasonable costs and expenses incurred, including, without limitation, reasonable attorneys' fees.

Compliance with Laws. Buyer shall comply with all laws, regulations and/or other requirements of local, state and federal governments in connection with its performance hereunder, including, without limitation, those pertaining to financial capability, responsibility and security for pollution damage.

Entire Agreement; Modifications; Waiver. This document contains the entire agreement of the parties regarding the subject matter hereof and supersedes all prior purchase orders, bills of lading, invoices, proposals, letters of intent, agreements, understandings and negotiations regarding the same. No modification of this agreement shall be effective without KWG's written consent. Except as otherwise provided herein, in no event shall this agreement be deemed amendable or amended by any purchase order, bill of lading or invoice issued and/or accepted by either party hereto. No course of prior dealings, no usage of the trade and no course of performance shall be used to modify, supplement, or explain any terms used in this document. Any waiver of strict compliance with the provisions of this agreement shall not be deemed a waiver of KWG's rights, privileges, claims or remedies, nor of KWG's rights to insist on strict compliance thereafter.

Mandatory Clauses Required Under Government Contracts or Subcontracts. If a government contract number is shown on the Buyer's purchase order, clauses contained in the United States Code of Federal Regulations, which the government makes mandatory for a contractor under a government contract to include in its subcontracts thereunder, will apply to this agreement.