



SALES TERMS AND CONDITIONS

EFFECTIVE: January 1, 2022

1. APPLICABILITY AND PURCHASER ACKNOWLEDGEMENT

These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by Kessington, LLC ("**Seller**") to the purchaser named on the applicable purchase order ("**Purchaser**"). The accompanying confirmation of sale (the "**Sales Acknowledgement**" and, together with these Terms, the "**Agreement**") supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Purchaser acknowledges and agrees with these Terms by placing an order to purchase Goods from the Seller or by accepting the Goods called for in a purchase order. These Terms prevail over any of Purchaser's general terms and conditions of purchase regardless whether or when Purchaser has submitted its purchase order or such terms.

2. ACCEPTANCE OF TERMS

Seller's acceptance of any order is subject to Purchaser's assent to all of these Terms set forth in Seller's Acknowledgment. Purchaser's assent to these Terms shall be presumed from Purchaser's failure to object in writing to these Terms within ten (10) days after Purchaser's receipt of Seller's Acknowledgment. If a purchase order or other correspondence contains terms or conditions contrary to these Terms, or if Purchaser makes any changes or updates to its terms and conditions over the life of the program, Seller's acceptance of any order shall not be construed as Seller's assent to any additional terms and conditions, nor will such acceptance constitute a waiver by Seller of any of these Terms contained in Seller's Acknowledgment.

3. PRICING

The price of Goods sold pursuant to any purchase order shall be as set forth in the quotation pursuant thereto (the "**Quote**"). Effective upon notice to Purchaser, Seller may unilaterally change the price applicable to any agreement between the parties and/or an issued Quote, even if the Quote specifies that price is firm, in response to the following: (a) changes in Purchaser's specifications, quantities ordered, shipment arrangements and other Purchaser requests; (b) changes in freight rates and other transportation related expenses; (c) changes in applicable laws, including, but not limited to, conditions described in Section 7 "**Taxes**" below; and (d) changes in Seller's cost of production, such as in the cost of raw materials, components, and/or labor.

4. SHIPMENTS AND PAYMENT TERMS

Unless otherwise quoted, prices shall be those in effect at time of shipment that shall be made Ex-Works Seller's point of shipment. Payment terms shall be net thirty (30) days from date of invoice. If any payment owed by Purchaser is not paid when due, then it shall bear interest at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid.



5. QUANTITY

If Seller delivers to Purchaser a quantity of Goods of up to 10% more or less than the quantity set forth in Purchaser's purchase order, Purchaser 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 such purchase order adjusted pro rata. Purchaser agrees that it will consider the purchase order complete upon Seller's notification to Purchaser of completion of production run.

6. INSPECTION AND REJECTION OF NONCONFORMING GOODS

Purchaser shall immediately inspect all Goods from Seller upon Purchaser's receipt of the Goods and Purchaser shall, within five (5) days of such receipt, notify Seller in writing of Purchaser's rejection of part or all of the Goods and the reason(s) for such rejection. In the event that such notice is not timely given, Purchaser shall be deemed to have accepted the Goods and shall expressly waive all rights to reject acceptance of the Goods and shall have accepted such Goods and is liable to Seller for full payment of such Goods. Purchaser may only reject a Good for reason of nonconformity if (a) the product shipped is different than the one identified in Purchaser's purchase order; or (b) the product's label incorrectly identifies its contents. With prior approval from Seller, Purchaser shall return the alleged defective Goods, freight prepaid, for Seller's inspection, and no other Goods shall be returned to any Seller facility without Seller's written consent. If Purchaser timely and properly rejects the Goods, then Seller shall, in its sole discretion, repair or replace such Goods, or credit or refund the Purchaser for the price of the Good.

7. TAXES

Prices shown do not include sales or other taxes imposed on the sale of goods. Any and all federal, state and local use, sales or similar taxes now or hereafter imposed upon sales or shipments will be added to the purchase price. Purchaser agrees to reimburse Seller and/or pay for any such taxes or provide Seller with an acceptable tax exemption certificate.

8. DELAY IN DELIVERY

In the event that delays, strikes, or other causes not within the control of Seller force postponement or delays, delivery dates or appointments will be appropriately adjusted and additional costs incurred by Seller, if any, will be reasonably determined and added to the price of Goods delivered. Factory shipment or delivery dates are the best estimates by Seller and in no case shall Seller be liable for any consequential or special damage arising from any delay in delivery.

9. LIMITED WARRANTY

Seller warrants that the Goods shall be free from defects in material and workmanship. This warranty shall expire twelve (12) months from the date of shipment. This warranty shall not apply in the event of defects caused by: (a) physical abuse of the Goods or any component or acts of vandalism by any persons other than Seller and/or its employees; (b) alterations,



modifications, additions, or repairs made during the applicable warranty period by anyone other than Seller and/or its employees; or (c) accidents or damage resulting from fire, water, wind, hail, lightning, electrical surge or failure, earthquake, theft or similar causes not caused or contributed to by the sole negligence of Seller or its employees. THE WARRANTIES IN THIS CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SAID WARRANTIES BEING EXPRESSLY DISCLAIMED.

10. LIMITATION OF LIABILITY

Seller shall be given reasonable and prompt opportunity to examine any claim of defect by the Purchaser. Purchaser agrees that its sole and exclusive remedy against the Seller shall be limited to either repair or replacement of the Goods or a refund of the purchase price at Seller's option. In addition, claims for shortages, other than loss in transit, must be made in writing not more than five (5) days after receipt of shipment. SELLER SHALL NOT BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR ANY LOSS, DAMAGE, OR INJURY RESULTING FROM DELAY IN DELIVERY OR INSTALLATION OF THE GOODS OR FOR ANY FAILURE TO PERFORM. THE MAXIMUM LIABILITY, IF ANY, OF SELLER FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM SELLER'S BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE GOODS AT ISSUE IN THE CLAIM.

IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES AND PROFITS AND/OR MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY INCLUDING THIRD PARTY CLAIMS.

Additionally, Purchaser, at its own expense, shall defend Seller against, and/or settle, (a) any patent, trademark, copyright or other intellectual property infringement claim pertaining to Goods furnished by Seller to Purchaser manufactured in accordance with designs, drawings or other descriptions proposed or furnished by Purchaser; and (b) any claim against Seller of contributory infringement resulting from the use or resale by Purchaser of Goods sold hereunder. Purchaser shall indemnify Seller for any award against Seller or settlement by Seller regarding any such claims and attorneys' fees and defense costs incurred in defense of such claims. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ATTRIBUTABLE TO AN INTELLECTUAL PROPERTY INFRINGEMENT.

11. COMPLIANCE WITH LAW

Purchaser shall comply with all applicable laws, regulations and ordinances. Purchaser shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Purchaser shall comply with all export and import laws of all countries involved in the sale of the Goods or any resale of the Goods by Purchaser. Purchaser 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.

12. WAIVER

No waiver by Seller of any of the provisions of the Terms is effective unless specifically set forth in writing and signed by an authorized officer of Seller. The failure of Seller to insist upon the performance of any of these Terms or to exercise any right or remedy hereunder shall not be deemed a waiver of such terms, conditions or rights in the future, nor shall it be deemed a waiver of any other term, condition, or right. 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.

13. TITLE AND RISK OF LOSS

Title and risk of loss passes to Purchaser upon delivery of the goods at EX Works. As collateral security for the payment of the purchase price of the Goods, Purchaser hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Purchaser in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.

The security interest granted under this provision constitutes a purchase money security interest under the Indiana Uniform Commercial Code (or the equivalent thereof of under any successor provision thereto).

14. 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 Purchaser, 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, Purchaser 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 Purchaser at the time of disclosure; or (c) rightfully obtained by Purchaser on a non-confidential basis from a third party.

15. FORCE MAJEURE

Seller shall not be liable for delays or failures in performance of an order or default in delivery arising out of or resulting from causes beyond its control. Such causes include, but are not restricted to, acts of God, acts of Purchaser, acts of the



Government or the public enemy, fire, flood, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes, severe weather or default of suppliers due to any of such causes. In the event of any such delay of Seller's performance, Purchaser shall honor its obligations hereunder as soon as Seller is able to perform.

16. COMPLETE AGREEMENT AND AMENDMENT

This writing is intended by the parties as a final expression of the Agreement and is also intended as a complete and exclusive statement of the terms of their agreement. Any subsequent modification or amendment to this Agreement may be made only in a writing signed by both parties.

17. 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, express 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.

18. SUBMISSION TO JURISDICTION

This Agreement is made in, and shall be construed and interpreted in accordance with the laws of the State of Indiana. All disputes involving this Agreement shall be adjudicated exclusively in the Circuit Court for the County of Elkhart, State of Indiana, or the U.S. District Court for the Northern District of Indiana. Purchaser hereby acknowledges and consents to personal jurisdiction in the State of Indiana.

19. 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.

20. ASSIGNMENTS

No assignment of these Terms or of any right or obligation under these Terms shall be made by Purchaser without the prior written consent of Seller. In the event of a proper assignment, the contract shall be binding upon and inure to the benefit of the Purchaser's successors and assigns.



21. SEVERABILITY

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

22. ATTORNEYS' FEES AND COSTS

In the event of Seller's enforcement of any term or condition in this Agreement, Purchaser shall be liable to Seller for all costs, including attorneys' fees, incurred by Seller in enforcing the Agreement and in collecting any sums owed by Purchaser to Seller.

23. TERMINATION AND SELLER MODIFICATIONS

Seller has the right to terminate any purchase order in whole or in part for its sole convenience, without reason or cause, by giving ninety (90) days written notice to Purchaser or immediately upon written notice to Purchaser if Purchaser: (a) fails to pay any amount under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) 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. Purchase orders accepted by Seller may not be cancelled or modified by Purchaser without the prior written consent of Seller. In the event Seller has accepted Purchaser's purchase order in writing, Purchaser may not change its purchase order unless Seller accepts in writing any change(s) requested by Purchaser (whereby Seller reserves the right to revise the price and delivery schedule).

24. NOTICES

All notices, requests, consents, claims, demands, waivers and other communication hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Seller's Acknowledgment or to such other addresses that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) certified or registered mail (in each case, return receipt requested, postage prepaid), or electronic mail. 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.

25. SURVIVAL

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of an individual order.