

## TERMS AND CONDITIONS OF SALE

All quotations and sales by K-TECHnologies, Inc. (Seller) are subject to the following terms and conditions

**1. ACCEPTANCE OF ORDERS** – All orders and sales contracts are subject to written approval and acceptance by the Seller or actual shipment of products by Seller. Any terms or conditions which are in conflict with these terms and conditions shall not be binding upon the Seller unless accepted in writing by the Seller. In case of conflict not expressly accepted by the Seller, the terms and conditions of sale herein shall be considered as superseding terms stated in the Buyer's purchase order or contract if Buyer has received a copy of these terms (i) prior to the date of such purchase order or contract or (ii) with Seller's acceptance of the contract or order.

**2. PAYMENT AND FINANCE CHARGES** – Terms of payment for the sale of products or services covered hereby are payable net 30 days from the invoice date, unless otherwise specified by Seller. Payment is due to K-TECHnologies, Inc., 5424 Abel Road, Hamburg, NY 14075. Prices of products do not include any taxes, freight, handling or any other similar charges. An interest charge of 1.5% per month will be added to all invoices not paid in 30 days. Buyer also agrees to pay all collection costs, including legal fees and court costs, if any of Buyer's account(s) are referred by Seller to a collection agency or an attorney for collection.

**3. CREDIT** – Accounts are subject to continuing credit approval by Seller at all times. The Seller reserves the right to cancel any order after acceptance if in Seller's judgment Buyer's credit has been impaired for any reason. If Seller cancels an order due to an impairment in Buyer's credit, Seller shall be entitled to bill Buyer for the cancellation charges provided for in paragraph 4.

**4. CANCELLATION OF ORDERS** – If Buyer cancels an order, in whole or in part, or defers the date of delivery for any reason, Buyer agrees to pay Seller any damages Seller incurs as the result of such cancellation or delay including damages relating to work in process, unused raw materials, un-amortized tooling, engineering and other cancellation charges incurred by Seller. All such damages will be determined by Seller within a reasonable time after the date of such cancellation or delay and invoiced to Buyer. Blanket orders that are rescheduled more than 2 months after original ship dates are subject to a 5% storage charge on the rescheduled releases. In addition to the damages provided for above, blanket orders cancelled prior to contract completion will be billed back for the difference between price break of quantity received (quoted), vs. total quantity ordered.

**5. DELIVERY, SHIPMENT & RISK OF LOSS** – The Seller will make every effort to complete orders within the time promised but delivery dates are estimates. The date of shipment shown on Seller's quotation or otherwise promised are subject to changing conditions which may be beyond the Seller's reasonable control. Under no circumstances will the Seller assume responsibility or liability for any damage or claims resulting from delays in delivery schedule. Unless otherwise specified, shipments are FOB Seller's facility. Responsibility for any loss or damage ends, and title passes to the Buyer when products are delivered to the carrier.

**6. ACCEPTANCE AND REJECTION** – Buyer will be responsible to inspect products within seven (7) business days after delivery for any shortages or non-conforming products. Failure to inspect

and report shortages or reject non-conforming product will be deemed acceptance by Buyer with full responsibility for payment of invoice. All products rejected by the Buyer must receive an RMA number from Seller prior to return and then be returned to the Seller for evaluation and for repair, replacement or credit at Seller's option.

**7. LIMITED WARRANTY** – Seller assembles or customizes products to specifications, drawings or other descriptions provided by Buyer. SELLER WARRANTS ALL PRODUCTS ASSEMBLED OR CUSTOMIZED BY IT AGAINST DEFECTS CAUSED SOLELY BY FAULTY ASSEMBLY OR CUSTOMIZATION FOR A PERIOD OF 90 DAYS AFTER DELIVERY. SELLER FURTHER WARRANTS THAT ALL PRODUCTS ASSEMBLED OR CUSTOMIZED WILL CONFORM TO BUYER'S SPECIFICATIONS, DRAWINGS OR OTHER DESCRIPTIONS PROVIDED TO SELLER IN WRITING. ALL PRODUCTS RESOLD BY SELLER WILL BE COVERED BY THE ORIGINAL MANUFACTURER'S STANDARD WARRANTY. SELLER MAKES NO OTHER WARRANTIES EITHER EXPRESS OR IMPLIED INCLUDING THE IMPLIED WARRANTIES OF MARKETABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES CONTAINED HEREIN ONLY APPLY TO PRODUCTS THAT ARE IN THEIR ORIGINAL CONDITION AND HAVE NOT BEEN DAMAGED OR ALTERED BY BUYER.

**8. LIMITATIONS ON LIABILITY** – BUYER'S SOLE REMEDIES FOR BREACH OF WARRANTY ARE LIMITED TO REPAIR, REPLACEMENT OR REFUND OF THE PURCHASE PRICE PAID FOR THE DEFECTIVE PRODUCT AT SELLER'S SOLE OPTION. SELLER SHALL NOT IN ANY EVENT BE LIABLE TO BUYER FOR ANY INDIRECT, SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING LOSS OF PROFIT, LOSS OF USE, PERSONAL INJURY OR INJURY TO REPUTATION. Buyer agrees to indemnify, hold harmless and defend Seller from and against all loss, liability and expense, including legal fees, resulting from any claim made or action brought resulting from the use of the products by Buyer or third parties.

**9. INFRINGEMENT** – The Seller manufactures products to Buyer's specifications. Buyer agrees to indemnify, save harmless and defend Seller from any loss, liability and expense, including legal fees, resulting from any claim made or action brought that the products infringe any intellectual property rights of third parties.

**10. QUOTATIONS** – Typographical and clerical errors in Seller's documents are subject to correction. The Seller reserves the right to revise any prices quoted by the Seller without notice at any time at or before acceptance of an order from Buyer by Seller.

**11. CHANGES** – All specifications and tolerances related to an order must be received by Seller in writing prior to acceptance of the order by Seller. If no tolerances are specified, commercial tolerances will apply to all products. If changes in specifications or tolerances are made after acceptance of an order, Buyer will be responsible for any and all incremental costs associated with such change. Such costs may include additional costs for work in process, unused raw materials, un-amortized tooling, engineering, replacement parts or other manufacturing costs.

**12. DRAWINGS AND SAMPLES** – Any drawing or sample supplied by Buyer will be accurate and complete. Buyer accepts any and all responsibility for any error, discrepancy or lack of information provided to Seller. Seller reserves the right to charge for time and labor to discover and correct any error in Buyer's information.

**13. TOOLING** – All new tooling (dies, hand tools, etc.) charges will appear on the first invoice and must be paid in full. If new tooling is for subcontracted work, Seller will invoice Buyer for 50% at the time of acceptance of the order and 50% upon delivery of the first order of products. Seller will be the sole and exclusive owner of all tooling unless otherwise mutually agreed between Seller & Buyer.

**14. BUYER INVENTORY** – If Buyer provides its inventory for use by Seller, either directly or through its suppliers, Buyer will supply a complete inventory list along with the parts furnished to Seller. All parts supplied by Buyer or its suppliers must be provided to Seller in a neat and orderly manner. Loose pieces should be bagged and labeled with count. Wires should be spooled for lengths over 15 feet. If Buyer fails to comply with these requirements, Seller reserves the right to charge for time and labor to sort and count the parts. Seller will do a receiving count, promptly notify Buyer of any shortages or damage, and Buyer will be responsible for correcting any shortages or damaged parts. Reasonable effort will be made to insure correct parts have been received but if incorrect parts are discovered during assembly, Buyer will be notified immediately and will furnish correct parts as soon as possible. . Seller accepts no responsibility for delivery delays caused by part shortages or errors that are the responsibility of Buyer.

**15. ENTIRE AGREEMENT** – This agreement contains the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof and shall not be modified except in writing signed by the parties hereto. No waiver by either party of any default shall be deemed a waiver of any subsequent default.

Form 45 Rev A