



STANDARD TERMS AND CONDITIONS OF SALE

These Standard Terms and Conditions (Terms) govern the sale of Products (Product or Products) and provisions of services (Services) by KromAmericas (KROM) and its affiliates (individually and/or collectively the Seller) to the person or legal entity purchasing such Products or Services (Buyer). These Terms are incorporated into the quotation, proposal, order acknowledgment, invoice or other document provided by Seller to Buyer in connection with the sale of the Products and Services (Seller's Documents) and into any purchaser order or work order provided by the Buyer. These Terms take precedence over Buyer's supplemental or conflicting terms and conditions to which notice of objection is hereby given. Neither Seller's commencement of performance nor delivery shall be deemed or construed as acceptance of Buyer's supplemental or conflicting terms and conditions. KROM's failure to object to conflicting or additional terms will not change or add to these Terms. Buyer's sending of a purchase order, and/or acceptance of the Products and/or Services from Seller shall be deemed to constitute acceptance of the terms and conditions contained herein.

1. **Orders:** All orders placed by Buyer are subject to acceptance by Seller. Orders may not be cancelled or rescheduled without Seller's written consent. All orders must identify the products, unit quantities, part numbers, applicable prices and requested delivery dates of the Products being purchased. Seller may designate certain Products and Services as non-cancelable, non- returnable (NCNR) and the sale of such Products shall be subject to any special terms and conditions contained in Seller's order acknowledgement or NCNR letter, which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere. Liability for the Products or Services applies only to the entity named as Seller and not to any other entity or affiliate of Seller.
2. **Prices:** The prices of the Products and Services are those prices specified in the Seller's Documents. Pricing contained in a price quotation or for undelivered Products may be increased in the event of an increase in Seller's cost, change in market conditions or any other causes beyond the Seller's reasonable control. Price quotations shall automatically expire in thirty (30) days from the date issued, or as otherwise stated in the quotation.
3. **Taxes:** All prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including federal, state and local sales, excise and value added, goods and services taxes, and any other taxes. Buyer agrees to indemnify and hold Seller harmless for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on Seller's invoice.
4. **Payment:** Payment may be made by cash, check, credit card, or wire transfer (all fees are borne by the Buyer). Seller in its discretion may require full or partial prepayment before shipment. Invoices are due upon receipt unless Seller in its discretion decides to extend credit. Where Seller has extended credit to Buyer, terms of payment shall be as specified by Seller from time to time. All payments and other amounts invoiced to Buyer shall be paid in full by Buyer when due without set-off or deduction, regardless of any claim, defense or other right that Buyer believes it may have against Seller under any purchase order or other agreement. On any past due invoice, Seller may impose interest at the lesser of the rate of one- and one-half percent (1.5%) per month or the maximum rate allowed under applicable law. If Buyer fails to make any payment when it is due, Seller reserves the right to change the payment terms or withdraw credit and/or to suspend or cancel performance under any or all purchase orders or agreements in which Seller has extended credit to Buyer. In the event of default by Buyer, Seller shall be entitled to costs, fees, and expenses, including but not limited to recovery of attorney fees, court costs and fees, and collections costs. Seller reserves the right to invoice for special terms at the time of order for large purchases where progressive payments become necessary.
5. **Delivery and Title:** All deliveries will be made "EXWORKS", Seller's facility. Title and risk of loss pass to the Buyer upon delivery of the Product to the carrier. Seller's delivery dates are estimates only and Seller is not liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of the Seller, nor shall the carrier be deemed

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an agent of the Seller. A delayed delivery of any part of an order does not entitle Buyer to cancel other deliveries. **Claims for shortages, loss of or damage to Products in transit or other errors in delivery must be made in writing to Seller within ten (10) days after receipt of shipment, and failure to give such notice will constitute unqualified acceptance and a waiver of all such claims by Buyer.**

6. Returns, Refunds and Exchanges:

Returns and Exchanges: No Product may be returned or exchanged without Seller's written consent, and any return or exchange may be subject to fees, in Seller's sole discretion. Any approved return or exchange item must be in new condition and in the original packaging. Returns and exchanges must be requested within 30 days of shipping date. Only products originally shipped from KROM or from an authorized supplier (drop-ship) will be considered for return or exchange. By requesting a return or exchange of products to KROM, the Buyer certifies that the products were purchased from KROM and there has been no substitution of the product from another supplier, distributor or other source of the product.

Non-Cancelable and Non-Returnable Items: Products sold as NCNR are identified as such on the Sales Order or Order Acknowledgement.

Return Freight / Restocking & Assembly Fees: KROM reserves the right to charge cancellation and restocking fees and to deduct such fees from any Buyer refund. Additionally, any assembly fees incurred are non-refundable. KROM does not refund the original shipping and handling. Buyer is responsible for all freight return charges. KROM does not accept COD shipments.

7. Limited Warranty:

- (a) **Service Warranty.** Seller warrants to Buyer that the Services furnished hereunder will be performed in accordance with the specifications set forth in the Seller Documents. Should a failure to conform to this warranty appear within ninety (90) days after completion of such Services (the Service Warranty Period), Buyer's sole and exclusive remedy (and Seller's sole and exclusive liability) for any breach shall be for Seller to either (i) re-perform the defective Services, or (ii) provide Buyer with a refund of that portion of amounts paid by Buyer to Seller for the defective Services (whichever remedy Seller determines, in its discretion, to provide). All claims for defective Services under this warranty must be made in writing to Seller immediately upon discovery and, in any event, within the Service Warranty Period.
- (b) **Engineered Products.** Seller warrants to Buyer that the Engineered Products will be free from defects in materials and workmanship for the EP Warranty Period. **EP Warranty Period** means the period beginning on the date of delivery of the Engineered Product to Buyer and ending on the first to occur of (i) the date that is twelve (12) months after startup or commissioning of the Engineered Product by Buyer or (ii) the date that is eighteen (18) months after the date of Seller's invoice to Buyer for such Engineered Product. If, within the EP Warranty Period, any such Engineered Products fail to conform to this limited warranty, Seller shall, in its sole discretion, either (y) repair or replace the affected Engineered Product free of charge or (z) refund the price paid by Buyer to Seller for such Engineered Product. Such repair, replacement, or refund shall be Seller's sole obligation and Buyer's exclusive remedy for any deficiency in any Engineered Products furnished, and shall be conditioned upon Buyer's return of such Engineered Products to Seller or, in Seller's sole discretion, inspection in the field by a Seller-authorized representative, in either case at Buyer's expense and risk of loss. Any parts of Engineered Products repaired or replaced under this warranty are warranted only for the balance of the EP Warranty Period on the original part that was repaired or replaced. The remedies under this warranty shall not be available to Buyer: (1) when the Engineered Product or any part thereof is altered or repaired without prior written authorization from an officer of Seller; (2) for normal wear and tear or cosmetic issues; (3) for Engineered Products that have not been installed, used and/or maintained in accordance with Seller's instructions and/or process conditions set forth in related data sheets, including any use following discovery of a defect; or (4) for damage resulting from acts of God or the willful

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misconduct or negligence of Buyer.

- (c) **Other Products.** For Other Products, Seller shall assign to Buyer any assignable warranties of the manufacturer of the Other Products as in effect on the date of delivery of such Other Products to Buyer by Seller, to the extent permitted by such warranties and applicable law. During the one (1) year period commencing on the date of delivery of the Other Products to Buyer by Seller, Seller will use commercially reasonable efforts to pursue warranty claims with the relevant manufacturer on behalf of Buyer. After such one (1) year period expires, Buyer shall be responsible for its own pursuit of any warranty claims directly with the manufacturer of the Other Products. **SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, TO BUYER FOR THE OTHER PRODUCTS.**

EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE, SELLER DISCLAIMS ALL WARRANTIES ON PRODUCTS AND SERVICES FURNISHED HEREUNDER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. SELLER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES ON ANY SOFTWARE INSTALLED IN THE PRODUCTS, INCLUDING ANY WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE, SECURE FROM CYBER THREATS OR UNINTERRUPTED.

8. Limitation of Liabilities:

BUYER SHALL NOT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR, LOSS OF PROFITS OR REVENUE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEADS, BUSINESS INTERRUPTION COST, LOSS OF DATA, REMOVAL OR REINSTALLATION COSTS, INJURY TO REPUTATION OR LOSS OF BUYERS, PUNITIVE DAMAGES, IPR INFRINGEMENT, LOSS OF CONTRACTS OR ORDERS OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE. BUYER'S RECOVERY FROM SELLER FOR ANY CLAIM SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE AFFECTED PRODUCTS IRRESPECTIVE OF THE NATURE OF THE CLAIM WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON (a) SELLER'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS, (b) MODIFICATION OF ANY PRODUCTS BY ANYONE OTHER THAN SELLER, or (c) USE IN COMBINATION WITH OTHER PRODUCTS.

9. Indemnification.

Buyer will indemnify and hold harmless Seller and its directors, officers, employees, agents, shareholders, subsidiaries, and affiliates (collectively, the Indemnified Persons) from and against, and will reimburse the Indemnified Persons for, any loss, liability, claim, damage, expense (including costs of investigation and reasonable attorney's fees and expenses, whether from in-house or outside counsel) from any claim, including but not limited to personal injury or death of any persons, by a third party arising out of, arising from, or in connection with (a) the use, operation, or servicing of the Buyer Property, however occurring; (b) any breach by Buyer of the Contract; (c) any violation by Buyer of any law, rule or regulation; (d) any use or resale of the Products by Buyer; (e) any negligence or willful misconduct of Buyer; and/or (f) any claim of patent, trademark, copyright or trade secret infringement, or infringement on any other proprietary rights of third parties to the extent that any Products are manufactured in accordance with drawings, designs or specifications proposed or furnished by Buyer. Seller shall give Buyer written notice of any claim for which indemnification is sought under the Contract, provided that the failure to give such written notice shall not, however, relieve Buyer of its indemnification obligations, except and only to the extent that Buyer forfeits rights or defenses by reason of such failure. Seller, may, at Seller's option, assume and control the defense of the claim, and in such case, Buyer shall indemnify Seller from and against losses, damages, costs and expenses (including attorney's fees, court fees, and other defense costs) incurred by Seller in defending such claims. If Seller decides not to assume the defense of a claim, then Buyer shall assume and control the defense of such claim, at Buyer's expense and by Buyer's own counsel (which counsel shall

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be subject to the approval of Seller, which approval will not be unreasonably withheld or delayed); provided that Seller shall have the right to participate in the defense of any claims with counsel selected by it at Seller's expense. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any claims. Notwithstanding any other provision of the Contract, Buyer shall not consent to the entry of any judgement or enter into any settlement of any claims without the prior written consent of Seller.

THE INDEMNIFICATION PROVIDED IN THIS SECTION WILL BE APPLICABLE WHETHER OR NOT THE SOLE OR CONCURRENT NEGLIGENCE OF THE INDEMNIFIED PERSONS, OR THE SOLE OR CONCURRENT LIABILITY IMPOSED VICARIOUSLY ON THE INDEMNIFIED PERSONS, IS ALLEGED OR PROVEN. FURTHERMORE, BUYER SHALL RELEASE AND FOREVER REFRAIN FROM ALL ACTIONS, CAUSES OF ACTION, MOTIONS, CLAIMS OR LIABILITIES BUYER HAS OR MAY HAVE AGAINST SELLER AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SHAREHOLDERS, SUBSIDIARIES, AND AFFILIATES ARISING OUT OF, ARISING FROM, OR IN CONNECTION WITH THE USE, OPERATION, OR SERVICING OF THE BUYER PROPERTY, HOWEVER OCCURRING. BUYER'S ATTENTION IS DIRECTED TO THE WARRANTY, LIABILITY, AND INDEMNITY PROVISIONS OF THIS DOCUMENT.

10. **Use of Products:** Products sold by Seller may be designed, intended or authorized for use in applications which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Products for use in any such applications in any way other than the specified and intended use of the manufacturer: (1) Buyer acknowledges that such use or sale is at Buyer's sole risk; (2) Buyer agrees that Seller and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and (3) Buyer agrees to indemnify, defend and hold Seller and the manufacturer of the Products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.
11. **Breach by Buyer.** In the event of any breach by Buyer of Buyer's payment obligations hereunder or any other default by Buyer under the Contract (each, an Event of Default) and at any time thereafter, in addition to all other rights and remedies granted to it in these Terms, at law, or in equity, Seller may (a) terminate the Contract and/or any or all orders between Buyer and Seller by providing written notice of termination to Buyer and (b) exercise all rights and remedies of a secured party under the Uniform Commercial Code or any other applicable law. In addition to any remedies that may be provided under the Contract, Seller may terminate the Contract or any order with immediate effect upon written notice to Buyer, if Buyer 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 creditor
12. **Force Majeure:** Seller is not liable for failure to fulfill its obligations for any accepted order or for delays in delivery due to causes beyond Seller's reasonable control including, but not limited to, acts of God, natural or artificial disaster, riot, war, strike, delay by carrier, shortage of Product, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, acts of terrorism, delays in transportation or inability to obtain labor, materials or Products through its regular sources, which shall be considered as an event of force majeure excusing Seller from performance and barring remedies for non-performance. In an event of force majeure condition, the Seller's time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure condition without subjecting Seller to any liability or penalty. Seller may, at its option, cancel the remaining performance, without any liability or penalty, by giving notice of such cancellation to the Buyer.
13. **Compliance with Laws:** Buyer shall comply with all applicable federal, state, and local laws, including labor, safety, environmental, and trade regulations.
14. **Set Off:** Seller may set off any amount due from Buyer, whether applicable to the same order or otherwise, against any amount due to Buyer hereunder. Buyer may not set off any amount due from Seller, whether under the contract or

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otherwise, against any amount due to Buyer hereunder without Seller's prior written consent.

15. **Buyer Information.** Seller's ability to deliver the Products and Services will depend on Buyer's reasonable and timely cooperation and the accuracy and completeness of any data from Buyer needed to deliver the Products and Services. Buyer shall provide to Seller any and all data necessary for Seller to perform and/or deliver the Products and Services. Buyer shall ensure that all data furnished by Buyer is reliable and accurate such that Seller can rely on such information without further investigation; and Buyer shall be responsible for any and all costs incurred by Seller as a result of any incomplete and/or erroneous Buyer- furnished information/data. Seller is not liable and Buyer waives any claim for the consequence of any action by Seller based on any incomplete or inaccurate information furnished by Buyer or third parties upon which Seller reasonably relies, and Buyer agrees to defend, indemnify and hold harmless Seller against claims resulting from the consequences of such incomplete or inaccurate information, including reasonable attorney's fees and other expenses incurred in defending against such claims. Buyer shall furnish decisions, information, and approvals required by the contract in a timely manner so as not to delay the performance and/or delivery of the Products and Services.
16. **General:**
- (a) **Governing Law-**This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Indiana, without regard to conflicts of law principles. Any lawsuit or other legal proceeding between the parties shall be brought in Marion County, Indiana. The parties hereby consent to the personal jurisdiction and exclusive jurisdiction of the venue of these courts. **THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING BETWEEN THE PARTIES.**
 - (b) **Assignment-** Buyer may not assign this Agreement without the prior written consent of Seller. Seller or its affiliates may perform the obligations under this Agreement. This Agreement is binding on successor and assigns.
 - (c) **Third Party Rights-**Products, including software or other intellectual property, are subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses.
 - (d) **Severability -** If any provision of these Terms is held to be invalid, illegal or unenforceable in any respect under any applicable law, such invalidity, illegality or unenforceability will not affect any other provision of these Terms, and such invalid, void or otherwise unenforceable provisions shall be null and void under such applicable law.
 - (e) **Survival -**Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of these Terms.
 - (f) **Time to Bring Action-**Any action that Buyer brings against Seller for breach of this Agreement or relating in any way to the goods, equipment, or services provided by Seller, must be brought within one year after the cause of action accrues, or Buyer's claims are waived.
 - (g) **Relationship of Parties-**Buyer and Seller are independent contractors, and nothing herein shall be construed to create a partnership, joint venture, agency, other form of joint enterprise, fiduciary or employment relationship. Neither party has nor will have any power to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party.

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