



KH Industries Terms and Conditions of Sale Updated November 2015

1. TERMS AND CONDITIONS OF CONTRACT. Except where otherwise provided in a written agreement duly executed by an authorized signatory of K & H Industries, Inc. (“KH”), all goods and services supplied by KH pursuant to the Confirmation of Order overleaf and these terms and conditions (the “Goods”) are provided subject to the details set out in the said Confirmation of Order and to the terms and conditions set forth herein. KH’s ACCEPTANCE OF AN ORDER IS EXPRESSLY CONDITIONED UPON BUYER’S ASSENT TO THESE TERMS AND CONDITIONS, AND BUYER’S ACCEPTANCE OF GOODS HEREUNDER SHALL BE DEEMED AN ACCEPTANCE OF THESE TERMS AND CONDITIONS. KH specifically rejects any terms and conditions in Buyer’s order or in any other document from Buyer that in any way conflict with, reduce or affect these terms and conditions.

2. PRICES. Unless otherwise agreed in writing, all prices are quoted F.O.B. at KH’s premises in Hamburg, New York, USA. All price quotes by KH will remain valid for thirty (30) days. Thereafter, prices are subject to change without notice to Buyer. Typographic, clerical and manifest errors in any offer are subject to correction by KH at any time. The minimum billing per order is \$100 plus freight charges, orders that do not meet this minimum will be subject to a \$25 service charge.

3. PAYMENT TERMS. Payment for all Goods shall be made in U.S. funds and prior to shipment (either by cash, banker’s draft, cashier’s check, check drawn on good funds, telegraphic transfer or approved credit card) or, at the sole discretion of KH, C.O.D., unless Buyer has applied for and been granted a line of credit by KH, in which case purchases can be made up to approved credit limits with payment therefore due net 30 days. Late payments shall be charged interest at the rate of 1.5% per month. KH is entitled hereunder to delay shipment until payment monies have cleared (e.g. check has become final; credit card charge has been authorized). Credit terms are subject to change or withdrawal at any time at KH’s sole discretion, regardless of prior credit arrangements. KH reserves the right to require current financial information from any buyer with an open account as a condition of the continued extension of credit. Buyer shall promptly reimburse KH in respect of KH’s costs, including reasonable attorneys’ fees, incurred in the collection of any monies owed to KH by Buyer. For orders invoiced or shipped outside the United States, KH will require a confirmed, irrevocable letter of credit, payable at sight in United States funds, advised and payable on an acceptable US bank. Buyer shall be solely responsible for procuring any and all necessary export, import and/or other permits. Buyer’s order shall constitute a representation that Buyer is solvent, and KH is relying upon such representation. If KH at any time reasonably believes that the Buyer is insolvent or that the Buyer’s credit is impaired, Buyer shall be in material breach thereof and hereof and KH may, without liability to Buyer, withhold performance hereunder, change the payment terms and/or repossess Goods delivered.

4. ADDITIONAL COSTS & TAXES. All prices and quotations are exclusive of sales, use, excise, duty, VAT and all similar taxes and levies. All such charges shall be for the account of Buyer and, if not included in an original invoice, may be invoiced or added to Buyer’s credit card payment, if any, by KH at a later date.

5. CHANGES; CANCELLATION OF ORDER. If Buyer cancels or changes the order, or any part thereof, for any reason, Buyer agrees to pay cancellation charges for all costs incurred by KH due to such cancellation, including without limitation, costs incurred by KH in the design, development or manufacture of special, custom-made or custom-designed Goods, or Goods altered at the request of Buyer [plus related profit, as reasonably determined by KH.] The costs shall include commitments made by KH to third parties for labor or materials for use in completing such order. KH’s determination of cancellation charges shall be final and conclusive.

6. SHIPPING. Title in Goods and risk of loss or damage thereto shall pass to Buyer upon delivery thereof by KH to the carrier at FOB point. Goods shall be shipped in accordance with the information set out in the Confirmation of Order overleaf. Unless instructed otherwise by Buyer, KH may ship by any reasonable manner and routing. All shipping costs shall be for the account of Buyer. All shipments shall be insured for their full replacement value and all such insurance shall be for the account of Buyer. All orders are subject to KH’s current shipping and handling charges. KH shall not be liable or otherwise responsible for defaults or delays in delivery by carrier. Shipping dates set out on the Confirmation of Order are approximations only, subject to, inter alia, factory schedules and inventory. If any shipment of Goods is delayed due to any act or omission of Buyer, KH may charge Buyer reasonable storage fees in relation thereto, including without limitation, storage costs, insurance costs and cost of money. Unless otherwise agreed by KH in writing, KH, in its sole discretion, may make partial shipments of any order, for which pro rata payments shall be due and payable as indicated on the invoice issued pursuant thereto. KH reserves the right not to ship to Buyer if Buyer’s account is overdue.

7. ACCEPTANCE OF GOODS. Buyer acknowledges that it has a duty to inspect Goods immediately upon receipt. Goods will be deemed accepted by Buyer unless notice of lawful rejection has been delivered in writing to KH within ten (10) business days after receipt thereof. Any notice of shortage must be delivered in writing to KH within three (3) business days after receipt thereof by Buyer. Any notice of damage to Goods must be delivered in writing to KH and the relevant carrier within three (3) business days after receipt thereof by Buyer. Authorization from KH must be received by Buyer in writing prior to the return of any Goods by Buyer hereunder, and Buyer shall be solely responsible for

adequate packing and pre-payment of freight with respect thereto. For the avoidance of doubt, KH shall not be obligated to accept any unauthorized return of Goods, any Goods inadequately packed or Goods for which freight has not been fully pre-paid by Buyer.

8. RETURNED GOODS. KH may, at its sole option, agree to accept unused and merchantable Goods from Buyer, subject always to a re-stocking charge of 20%. Buyer agrees that it shall not return any Goods prior to receiving written authorization from KH so to do. Any and all returned Goods shall be shipped freight pre-paid and risk of damage or loss shall remain vested in Buyer until the relevant Goods are received, inspected and accepted by KH. For the avoidance of doubt, KH is not obligated to accept any returned Goods pursuant to this paragraph. Custom manufactured Goods are non-cancelable/non-returnable.

9. RE-CONDITION & REPAIR. Before shipping any Goods to KH for repair, Buyer shall contact KH for Return Merchandise Authorization (RMA) and shipping instructions. With respect to any repairs by KH, Buyer shall be solely responsible for payment of freight charges, replacement parts, and labor costs at KH’s then current prices. Any repairs to any of the Goods performed by Buyer or by third parties [pre-approved by KH] shall be carried out in strict accordance with the applicable repair manual(s), if any, published by KH from time to time.

10. LIMITED WARRANTY; EXCLUSION OF OTHER WARRANTIES;

LIMITATION OF REMEDIES; INDEMNITY.

KH warrants the Goods to be free from defects of materials or workmanship, under normal and proper use and service, for a warranty period of one (1) year from the date of shipment (as such date is shown in KH’s records)(the “Warranty Period”). If any of the Goods proves to be defective in any material respect within the Warranty Period, such defective Good(s) shall be promptly returned to KH, F.O.B. KH’s factory, shipping charges prepaid, by the Buyer, and if the same is determined by KH to be defective in any material respect and covered by the terms of the warranty provisions set forth in this Section 10, it will be replaced or repaired, at the exclusive election of KH, free of charge. If Buyer believes any of the Goods are defective in any material respect during the Warranty Period, Buyer shall immediately cease using such Good(s) and notify KH in writing of such non-conformity or defect, specifying in reasonable detail the nature thereof. Notwithstanding the foregoing, KH is not responsible for, and shall have no obligation to replace or repair any Goods which: (i) have been used, operated and/or installed other than in strict accordance with KH’s written instructions and/or policies, if any; (ii) have been installed, operated or used in an improper, abnormal or inappropriate manner, as reasonably determined by KH; (iii) have been damaged due to the negligence of another party; (iv) have been damaged due to an accident,



KH Industries Terms and Conditions of Sale Updated November 2015

natural disaster, extreme weather, or other act of God; (v) have been serviced, repaired or altered by anyone other than KH or a third party approved by KH to service or repair the defective or damaged Goods, and provided further, that all such service, repair and alterations by approved third parties must be completed in accordance with the applicable repair manual(s) for the defected or damaged Good, if any; or (vi) have been used in a manner or for a purpose for which the Goods were not designed.

No warranty is made with respect to any defects in the Goods due to plans or instructions supplied to KH by or for Buyer. THE LIMITED WARRANTY SET FORTH IN THIS SECTION 10 IS MADE AND ACCEPTED BY BUYER IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE GOODS, WHETHER EXPRESS OR IMPLIED, MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. THE LIMITED WARRANTY SET FORTH IN THIS SECTION 10 IS BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECTS OR DAMAGE TO THE GOODS, AND ALL OTHER REMEDIES ARE EXPRESSLY DISCLAIMED.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, KH IS NOT RESPONSIBLE FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION OF THE GOODS, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOSS OF USE; LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING LOSS OF PROFITS ON CONTRACTS); LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; OR LOSS OF REPUTATION.

Buyer acknowledges that the Goods may be used in inherently dangerous activities and, accordingly, expressly bears the risk of injury damages and other harm to Buyer, and its employees, contractors, representatives, and other third parties arising out of use of the Goods in such inherently dangerous activity(ies). Buyer agrees to indemnify and hold KH harmless from and against any claims, awards, damages or other costs incurred by KH, including reasonable attorneys' fees incurred by KH in connection with same, arising out of the use of any Good(s) in inherently dangerous activities.

While KH uses reasonable endeavors to ensure the accuracy and quality of its publications, sales literature and other printed materials, from time to time errors might occur in that regard. KH therefore does not guarantee the accuracy or completeness of any publication or other informational materials.

11. INTELLECTUAL PROPERTY. The purchase by Buyer of any Goods hereunder does not grant to, convey or confer upon Buyer or Buyer's customers, or upon anyone claiming under Buyer, a license or any other legal interest, express or implied, under any patent right, trademark, copyright or other intellectual property right,

whether registered or not and whether pending or not, in any jurisdiction, of KH covering or relating to any of the Goods or any combination or process in which any of the Goods might be or are used.

Buyer understands and agrees that KH does not warrant that the Goods are free of claims of patent, trademark, trade secret or copyright infringement by a third party. KH hereby disclaims any such warranties or indemnification for such infringement(s) or intellectual property rights.

Any rights not expressly granted herein are reserved by KH.

12. FORCE MAJEURE. KH shall not be liable for any failure to perform under the Confirmation of Order or these terms and conditions if it is unable to obtain parts or supplies at reasonable prices or through usual and regular sources on a timely basis, or due to any interruption of transportation, government regulation, labor disputes, strikes, riots, war, civil commotion, fire, flood, accident, storm, or act of God, or other cause beyond KH's reasonable control that renders it impractical for KH to perform.

13. ARBITRATION. Buyer agrees that the laws of the State of New York, without regard to principles of conflict of laws, shall govern the agreement between KH and Buyer with respect to all sales of Goods, and any dispute of any sort that may arise in connection with these terms and conditions and the sale of Goods to Buyer by KH (a "Dispute"). All Disputes shall be submitted to final and binding arbitration, the proceedings of which shall be located in Buffalo, New York, and conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") by one arbitrator appointed in accordance with the Rules. Notwithstanding the foregoing, Buyer acknowledges that KH may, in its sole discretion, elect to commence an action in a court of competent jurisdiction located in Buffalo, New York (without resorting to commencing arbitration proceedings as specified above) to enforce Buyer's failure to timely pay any and all amounts due to KH for the purchase of Goods (a "Financial Default"). In connection with the foregoing, in the event KH elects to commence an action against Buyer in connection with a Financial Default, Buyer specifically acknowledges and irrevocably consents to the jurisdiction of a court of competent jurisdiction located in Buffalo, New York, waives objection to the laying of venue of any such action or other legal proceeding in Buffalo, New York, waives personal service of process in such action, and consents to the making of service of process in each such action by registered mail, directed by KH to the last known address of Buyer showing in the records for KH, service to be deemed complete five (5) days after the mailing thereof.

Other than a Financial Default (in which case KH may, in its discretion, elect to commence a lawsuit against Buyer

in a court of competent jurisdiction located in Buffalo, New York), all Disputes shall be resolved exclusively by arbitration. Any award made by the arbitrator shall be final, binding and conclusive on the parties for all purposes. Any fees or charges of the arbitration and any cost of arbitration, including the cost of personal attorneys of each participant, shall be the sole responsibility of each party to the arbitration; provided, however, in the event of a Financial Default, KH may recover all costs and expenses incurred by it (including its attorney fees) in seeking payment or enforcement of these Terms and Conditions as a result of the Financial Default, including whether KH commences an action or initiates arbitration proceedings.

14. GENERAL. This agreement will be governed by and construed in accordance with the laws of the State of New York. The application of the United Nations Convention for the International Sale of Goods, if it would otherwise apply, is hereby expressly excluded. These terms and conditions and the Confirmation of Order overleaf set out the entire agreement between KH and Buyer relating to the Goods and supersede any prior agreement, arrangement, purchase order, correspondence, communication, advertising or representation concerning the Goods. This agreement may not be modified or amended except by a written instrument duly executed by authorized signatories of the parties. If any provision of this agreement is held to be invalid or unenforceable, that provision is to be given effect to the maximum extent permissible and the remaining provisions of this agreement will remain in full force and effect. Notices hereunder shall be delivered in writing by registered mail to the addresses of the parties overleaf, or as notified to the other party from time to time. If any term, provision, or covenant of these terms and conditions is held to be invalid void, or unenforceable, the remainder of these terms and conditions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Each shipment of Goods shall be considered a separate transaction between Buyer and KH. In the event of any default by Buyer, KH may decline to make further shipments. If KH elects to continue to make shipments of Goods subsequently ordered by Buyer after a default, such subsequent shipments shall not constitute a waiver of default by KH or in any way affect its legal remedies for any such default.