



KCB Solutions Standard Terms and Conditions

1. **General:** These terms and conditions shall be deemed included as part of any order or orders placed with KCB Solutions LLC. (Hereinafter referred to as "KCB") in accordance with or as a result of this Quotation or Acknowledgement. All orders by the purchaser of products or services of KCB ("Purchaser") require a written purchase order and are subject to acknowledgment by KCB. The terms of this Quotation or Acknowledgement supersede the terms of purchaser's purchase order. Any additional or different terms on Purchaser's purchase order form are deemed material alterations to any contract between KCB and Purchaser, and KCB hereby gives notice of its objection to them. The terms and conditions set forth by this Quotation or Acknowledgement are limited to orders placed with KCB or resulting from this Quotation or Acknowledgement. Any subsequent orders placed by buyer not resulting from this Quotation or Acknowledgement, such as orders for service parts, may be subject to terms and conditions differing from the terms and conditions of this Quotation or Acknowledgement.
2. **Prices:** All prices are FOB, the plant of manufacture of KCB, unless otherwise stated. Prices also do not include any federal, state, or local taxes or other governmental charges upon or with respect to the sale, purchase, manufacture, delivery, storage, processing, use or consumption of any of the goods or services provided hereby. Consequently, in addition to the price specified, the amount of such taxes or other governmental charges that KCB may be required to pay or collect under present or existing future law shall be paid by the Purchaser and added to the invoice.
3. **Cancellation or Changes:** An accepted order is not subject to cancellation or change except on terms acceptable and satisfactory to KCB, including reasonable cancellation charges in the event of cancellation or an equitable price adjustment in the event of changes in an accepted order. Direction from Purchaser to cancel may be treated as a repudiation making the Purchaser immediately liable for loss, expense and other damages sustained. If this order is cancelled or delayed prior to the completion of the contract, Purchaser shall indemnify KCB for costs incurred by KCB up to the date of cancellation or delay and for all damages sustained by KCB due to cancellation or delay of this order. Should Purchaser purchase KCB products at a quantity discount or price lower than the list price due to the quantities purchased and subsequently reduces or cancels the quantity ordered, Purchaser is subject to a "billback charge" for the difference in price of the quantity ordered and the list price or the pricing that was quoted for the actual quantity accepted after such reduction or cancellation multiplied by the actual quantity purchased. Should such cancellation or reduction take place the Purchaser shall also be subject to a restocking fee of up to the full price of quantities on hand at KCB (including related raw materials and work-in process) cancelled or reduced by Purchaser.
4. **Shipping:** All orders will be shipped freight collect. Separate charges for shipping and handling will be shown on Purchaser's invoice. All risk of loss shall pass to Purchaser when the goods are delivered to the carrier.
5. **Failure to Deliver:** KCB shall not be responsible for delays in delivery, or failure to deliver due to causes beyond its reasonable control, including without limitation, acts of God, acts of Purchaser, government action (civil or military), taking or preempting KCB's production facilities, legal interferences or prohibitions, fires, strikes or other labor difficulties, or hostilities, insurrections or riots, embargoes, equipment breakdown, wrecks or delays in transportation, unusually severe weather, inability to obtain necessary labor, material or manufacturing facilities due to causes beyond its reasonable control or any like dissimilar cause beyond its reasonable control. In the event of such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. KCB shall have the right to furnish suitable substitutes for materials which cannot be obtained because of above causes and to portion its shipment among its customers in such a manner as it shall be equitable. If the material, apparatus or equipment is or thereafter become subject to government control, allocation, regulation or restriction, the necessary and proper rating certificate shall be supplied by the Purchaser. Delivery dates are from receipt of order, prints, models or materials, whichever is later, which are to be furnished by the Purchaser. Due to the nature of KCB's custom work, delivery dates are estimates and not guarantees, and Purchaser understands and agrees to reasonable delays in delivery. Overtime and other direct costs incurred to hasten delivery of Purchaser's request shall be added to the stated prices and paid by Purchaser. Shipment of goods ready for delivery can be deferred beyond date for delivery only with KCB's consent and upon full payment of KCB's invoice for same plus storage costs. There shall be no penalties for late shipments unless arranged prior to production and confirmed by KCB in writing.
6. **Risk of Loss:** KCB assumes no responsibility for delays, breakage or damage after having made delivery to a common carrier, at which time, all risk of loss for any cause passes to Purchaser. Unless otherwise specified, packing will be for domestic shipping and meet the requirements of United States common carriers.
7. **Claims:** No claim for variances from Purchaser's specifications or shortages in orders will be considered by KCB unless presented to it in writing within ten (10) days after receipt of goods.
8. **Payment:** For orders invoiced and shipped in the United States, the terms are thirty (30) days net from the date of invoice, subject to approval of credit by KCB. For orders invoiced or shipped outside of the United States, KCB will require a confirmed, irrevocable letter of credit, payable at sight in United States funds, advised, confirmed and payable on a United States bank acceptable to KCB. If, in the judgment of KCB, the financial conditions of Purchaser at any time does not justify shipment or the continuation of production on the aforesaid terms of payment, KCB may require payment in advance, alternative payment terms in form and substance satisfactory to KCB or terminate the purchase order or any agreement related thereto without liability and without waiving any other remedies. Purchaser shall pay interest on all past due sums at the rate of 1.0% per month. If the financial condition of the Purchaser at any time does not, in the judgment of KCB, justify continuance of the work to be performed by KCB on the terms of payment as agreed upon, KCB may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and receive reimbursements for its reasonable cancellation charges, and in the event of bankruptcy insolvency of the Purchaser or in the event any proceeding is brought against the Purchaser, voluntary or involuntary, under the bankruptcy or any insolvency laws, KCB shall be entitled to cancel any order then outstanding, and shall receive reimbursement for its reasonable cancellation charges. Title to tools and fixtures shall remain in KCB until all terms of payment have been satisfied.
9. **Default:** KCB may make partial shipments and each shipment shall be treated as a separate transaction, but in the event of any default by the Purchaser, KCB, without prejudice to any other remedy provided herein or by law, may treat such default as breach of the entire contract or may defer further deliveries until such default is cured, in which latter event, if KCB so elects, the dates of all subsequent deliveries shall be extended for a period equal to the length of time of such deferral. If, despite any default by the Purchaser, KCB elects to continue to make deliveries, its actions shall not constitute a waiver of any default by the Purchaser or in any way effect KCB's remedies provided herein or by law for any such default.
10. **LIMITED WARRANTY:** KCB products are warranted against defective materials and workmanship for a period of ninety (90) days from the date of delivery to the original Purchaser (warranty period). Any product that is found to be defective within the 90 day period will be either credited or replaced at the discretion of KCB. ***THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, PERFORMANCE, OR OTHERWISE.*** KCB is not an expert in the customer's technical field and therefore does not warrant the suitability of its products for the applications selected by the customer. KCB accepts no responsibility for misuse, misapplication or unauthorized modification of its products.
11. **LIMITATION OF LIABILITY:** KCB's obligation under this limited warranty is strictly and exclusively limited to the repair or replacement

free of charge of such articles as are found to be defective in material or workmanship on the condition that the Purchaser gives prompt written notice to KCB of any claim to breach of warranty within the warranty period, and, if requested, returns the defective articles to KCB. KCB will not assume any expenses or liability for repairs made to its articles outside of its plant, without its prior written consent. KCB reserves the right to satisfy its warranty obligation in full, with respect to defective articles, by the payment to the Purchaser of all sums paid by the Purchaser to KCB for such articles, **KCB MAKES NO OTHER WARRANTY REGARDING ITS PRODUCTS OR THE PRODUCTS OF OTHERS EITHER EXPRESS OR IMPLIED, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEEDS THE FORGOING WARRANTIES IS HEREBY DISCLAIMED BY KCB AND EXCLUDED FROM ANY AGREEMENT MADE BY ACCEPTANCE OF ANY ORDER. KCB DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE OR REPLACEMENT PRODUCT, FACILITIES OR SERVICES, DOWNTIME, CHARGES FOR PURCHASER'S TIME AND EFFORT, THE CLAIMS OF THIRD PARTIES, INJURY TO PROPERTY, OR ANY OTHER DIRECT, INDIRECT SPECIAL RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM AND WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT BASED ON BREACH OF WARRANTY, CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, EVEN IF KCB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. THIS LIMITATION OF LIABILITY APPLIES BOTH TO PRODUCTS AND SERVICES AND SUPPORT PROVIDED TO PURCHASER UNDER THIS AGREEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY KCB, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE LIMITED WARRANTY PROVIDED HEREIN. ANY AND ALL LIABILITY OF KCB IS EXPRESSLY LIMITED TO THE PRICE PURCHASER HAS PAID FOR THE PRODUCTS. PURCHASER'S SOLE REMEDY AGAINST KCB IN ANY DISPUTE UNDER THIS AGREEMENT SHALL BE TO SEEK RECOVERY OF THE AMOUNTS PURCHASER PAID, PURSUANT TO LIMITED WARRANTY PROVIDED HEREIN, UPON THE PAYMENT OF WHICH KCB, ITS AGENTS AND EMPLOYEES, AND AFFILIATES, WILL BE RELEASED FROM AND DISCHARGED OF ALL FURTHER OBLIGATIONS AND LIABILITY TO PURCHASER.**

12. **Return of Goods:** Goods may not be returned to KCB for repair or replacement or credit, or otherwise, without KCB's prior written authorization and KCB will not accept any responsibility for goods returned without such authorization. All Goods requiring warranty repairs must be returned by Purchaser to KCB in Shirley, MA, or to such other location designated by KCB, with a letter stating the problem and probable cause, with a date and time of failure, together with freight, handling, customs duties (if any) and proper documentation. All transportation costs incident to the shipment of any material to or from KCB under this or the foregoing paragraph shall be charged to the Purchaser.
13. **Exchanges:** From time to time, KCB may, in its sole discretion, exchange products or portions of a product. Any exchanges will be made in accordance with KCB's exchange policies in effect on the date of the exchange.
14. **Waiver:** No provision hereof and no breach of any provision shall be deemed waived by reason of any previous waiver of such provision of any breach thereof. There are no understandings, conditions or agreements relative to this quotation that are not fully expressed herein.

15. **Terms, Interest and Collection Costs:** Terms of payment for this quotation are set forth therein. In the event it is necessary to place any contract based on this proposal in the hands of an attorney for collection, Purchaser shall pay KCB 's reasonable costs of collection of money due and unpaid, including reasonable attorneys' fees.
16. **Design Modifications:** Purchaser will allow extra charges for authorized or requested changes to Purchaser's design or specifications. KCB is not responsible for dimensional or other errors on Purchaser's drawings, and Purchaser shall reimburse KCB for additional costs resulting from such errors.
17. **Intellectual Property Rights:** KCB shall retain all rights in all intellectual property, including any rights under any patents as well as any un-patented information, such as trade secrets, confidential information, trademarks, trade dress, or copyrights possessed by KCB which may be protected by state, federal and/or common law, and nothing in this Quotation or Acknowledgement shall be deemed or construed to be a transfer or license of any of KCB's intellectual property. Purchaser shall obtain rights to such intellectual property only to the extent that KCB may grant such rights (whether by license or otherwise) in writing.
18. **Liabilities:** Purchaser agrees to defend, and protect, and save harmless KCB against all suits from all damages, claims and demands for actual or alleged infringement of any patent or for manufacture of goods by reason of KCB's execution of the designs, prints, drawings, requirements, or specifications of Purchaser.
19. **Purchaser's Property:** Purchaser shall assume liability for patent and copyright infringement when products are made to Purchaser's specifications. When the quotation specifies material to be furnished by, ample allowance must be made for reasonable waste, and material must be of suitable quality to facilitate efficient production. All materials to be supplied by Purchaser must be of first quality and must be timely delivered to KCB. KCB shall have the right to scrap, without liability, prints submitted for quotation, as well as models, patterns, tools, fixtures or other property belonging to Purchaser unless written directions for shipment of such property are given to KCB within thirty (30) days of notification by KCB.
20. **Tooling Modifications:** Modifications made to the tooling in order to manufacture an acceptable part will be at the discretion of KCB.
21. **Assignments:** The rights and duties of Purchaser hereunder shall not be assignable by Purchaser without the prior written consent of KCB, which shall not be unreasonably withheld.
22. **Severability:** The terms and conditions contained herein are separate and severable and the invalidity or unenforceability of one or more of such terms and conditions shall not affect the validity or enforceability of any other term or condition.
23. **Waiver:** The failure of KCB to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions nor the right of KCB thereafter to enforce each and every such provision.
24. **Applicable Law; Not for Resale:** Purchaser agrees to comply with all applicable laws and regulations of the various states and of the United States or any foreign country, as applicable. Purchaser agrees and represents that it is buying the product for its own internal use only, and not for resale.
25. **Governing law:** The U.N. Convention on Contracts for the International Sale of Goods, 1980 will not apply to this transaction. This Agreement is to be construed under, and the respective rights of KCB and Purchaser are to be determined according to the laws of the Commonwealth of Massachusetts.
26. **EXPORT.** Regardless of any disclosure by Purchaser to Seller of the ultimate destination of the Products, Purchaser will not export, directly or indirectly, any Seller product without first obtaining an export license from the U.S. Department of Commerce, U.S. Department of State, or any other agency or department of the United States Government, as required, or without otherwise complying with the U.S. Export Administration Act, as amended, and all rules and regulations thereunder.