

**TKM UNITED STATES, INC.**  
**TERMS AND CONDITIONS OF SALE AND SERVICE**

**1. Agreement and Acceptance.** These terms and conditions (these *Terms and Conditions*), together with any related purchase orders, shall constitute the complete agreement (the *Agreement*) with respect to the sale of products (the *Products*) and provision of services (the *Services*) by or through TKM United States, Inc. (*Seller*) to a buyer (*Buyer*). Except as otherwise agreed in writing, any contract of sale resulting from Buyer's purchase orders pursuant to this Agreement is expressly conditional on acceptance of Buyer's order by Seller at its main office. Seller hereby notifies Buyer in advance that Seller objects to any terms and conditions in Buyer's purchase order or other document which are additional to or different than these Terms and Conditions, whether or not such additional or different terms would materially alter the Agreement.

**2. Limited Warranties.** Seller warrants that the Products will be free from defects in material and workmanship and the Services will be performed with due care and in a manner consistent with industry standards. The warranties expire 12 months after shipment to Buyer or performance. These warranties do not cover damage resulting from ordinary wear and tear, misuse, neglect, accident, alterations, failure to follow instructions, fire, or acts of God. SELLER MAKES NO OTHER WARRANTY WHATEVER, EXPRESS OR IMPLIED. THE WARRANTIES PROVIDED HEREIN ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND ANY IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES WHICH EXCEED OR DIFFER FROM THE WARRANTIES HEREIN EXPRESSED ARE DISCLAIMED BY SELLER AND EXCLUDED FROM THIS AGREEMENT.

**3. Limitation of Buyer's Remedies.** BUYER'S SOLE AND EXCLUSIVE REMEDY PURSUANT TO ANY CLAIM OF ANY KIND AGAINST SELLER WILL BE, AT SELLER'S SOLE DISCRETION, (I) WITH RESPECT TO A PRODUCT THE REPAIR OR REPLACEMENT OF THE PRODUCT (F.O.B. SELLER'S FACILITY), (II) WITH RESPECT TO SERVICES THE RE-PERFORMANCE OF THE SERVICES IN COMPLIANCE WITH THE LIMITED WARRANTY, OR (III) A REFUND OF THE PRICE PAID FOR THE PRODUCT OR SERVICES. FOR ANY CLAIM OF ANY KIND AGAINST SELLER IN CONNECTION WITH A PRODUCT, THE SERVICES OR THE AGREEMENT (INCLUDING, BUT NOT LIMITED TO, ANY CLAIM THAT SELLER HAS FAILED TO SATISFY ITS REPAIR/REPLACEMENT OBLIGATION), BUYER WILL BE LIMITED (SUBJECT TO THE EXCLUSIONS SET FORTH BELOW) TO RECOVERING ONLY ITS DIRECT DAMAGES UP TO BUT NOT IN EXCESS OF THE PRICE PAID BY BUYER TO SELLER FOR THE PRODUCT OR SERVICES UNDER THE AGREEMENT, PROVIDED THAT IF THE AGREEMENT HAS A TERM IN EXCESS OF 12 MONTH, THE DAMAGES MAY NOT EXCEED THE PRICE PAID BY BUYER DURING THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. SELLER SHALL HAVE NO FURTHER LIABILITY UNDER ANY CIRCUMSTANCES FOR DAMAGES OF ANY KIND TO BUYER'S EMPLOYEES, AGENTS, SUBCONTRACTORS, INVITEES OR OTHER THIRD PARTIES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURIES AND

PROPERTY DAMAGE RESULTING FROM SELLER'S PRODUCTS OR SERVICES. BUYER SHALL NOT BE ENTITLED TO PUNITIVE DAMAGES FOR BREACH OF THIS AGREEMENT UNDER ANY CIRCUMSTANCES. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S EXCLUSIVE REMEDIES IN CONNECTION WITH THIS AGREEMENT. BUYER ACKNOWLEDGES THAT SELLER'S PRICE FOR THE PRODUCTS AND SERVICES PURCHASED BY BUYER IS BASED UPON AND IS A SUFFICIENT CONSIDERATION FOR LIMITING SELLER'S LIABILITY HEREUNDER.

**4. Indemnification.** Buyer shall defend, indemnify and hold harmless Seller with respect to any claim, cause of action, obligation or liability asserted against Seller by any party which arises out of or is related in any manner to (a) any breach of the terms and conditions hereof by Buyer, (b) any alteration or modification of Seller's Products not approved in writing by Seller, or any irregular design, use, storage, installation or application thereof by Buyer or any of Buyer's employees, agents, subcontractors, invitees, customers or others with access to Seller's Products, (c) as to any claim that Seller's fabrication of the Products pursuant to designs supplied by Buyer infringed any patents, trade secrets or other rights of third parties, or (d) Seller's performance of the Services pursuant to Buyer's instructions.

**5. Shipment, Performance and Delivery.** Shipment and performance dates are approximate only. Seller will exercise its best efforts to ship and perform on schedule, but shall not be liable to Buyer or others for any damage or loss whatsoever caused by any delay. Title to the Products shall pass to Buyer upon delivery to the carrier F.O.B. point of manufacture. Unless specified in Buyer's order accepted by Seller, Seller shall select the means of shipment and delivery. Buyer shall not have the right to redirect or divert shipments without the prior written consent of Seller. Seller reserves the right to over- or under-ship non-stock and made-to-order items by 10%.

**6. Payments; Price Adjustments.** Unless otherwise specified by Seller, all Product prices are F.O.B. Seller's factory or warehouse from which shipment is made. Payment will be net/cash 30 days from date of invoice. Invoices unpaid and past due will be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of eighteen percent (18%) per annum or the maximum allowable interest rate under applicable law, and Buyer shall be responsible and liable for all expenses incurred by Seller in collection, including reasonable attorneys' fees. The prices stated herein do not include any sales, use, or other taxes unless so stated specifically. Such taxes will be added to invoice prices in those instances in which Seller is required to collect them from Buyer; provided, however, that if Seller does not collect any such taxes and is later asked by or required to pay the same to any taxing authority, Buyer will make such payment to Seller or, if requested by Seller, directly to the taxing authority. At Seller's option, prices may be adjusted to reflect any increase in the costs of Seller resulting from state, federal or local legislation, or any change in the rate, charge, or classification of any carrier. If Buyer shall fail to comply with any provision or to make payments in accordance with the terms of this Agreement or any other agreement between Buyer and Seller, Seller may at its option defer shipments, or, without waiving any other rights it may have, terminate this Agreement. All deliveries and performances shall be subject to the approval of Seller's credit department.

**7. Return Policy.** Subject to the terms of this return policy, Seller may return a Product within 180 days of shipment for a credit of the purchase price paid, less shipping and handling and any applicable restocking fees (as further described below). Returns during the first or second half of a year may not exceed 10% of Buyer's purchase volume from Seller during the 6 months preceding the respective period. Before returning a Product, Buyer must first contact Seller at: TKM United States, Inc., Attn. Customer Service Manager, 1845 Airport Exchange Blvd., Suite 150, Erlanger, KY 41018 (phone: 866.856.8721; fax: 859.689.7565; email: sales@tkmus.com) and request a written Return Material Authorization (RMA) before the end of the return period. Buyer must ship the Product to Seller within 15 business days of receiving the RMA. A copy of the RMA must accompany the returned Product. Unless the Product is defective or the return is a direct result of a Seller error, Seller may charge a restocking fee of up to 15% of the purchase price paid, plus any applicable sales tax. Non-stock items, made-to-order items, items for which manufacturers will not accept returns, custom configurations, open units and/or units that require repackaging, units in unsuitable resale condition, and remanufactured or refurbished Products are non-returnable. Buyer is responsible for shipping charges and risk of loss on all return shipments. If Buyer fails to return Product within the return policy period or if the Product does not meet the rights of return and processes under this return policy, the Product is not returnable.

**8. Force Majeure.** Seller shall not be liable for any delays or nonperformance resulting from force majeure, including, without limitation, strikes, labor disturbances, material shortages, nonperformance by subcontractors or suppliers, or other abnormal manufacturing conditions, delays or failures of carriers or communications, fire, flood, storms, accident, riot, war and invasion, governmental requisitions or priorities, acts of God, or other causes beyond Seller's reasonable control.

**9. Claims; Commencement of Actions.** Buyer shall promptly inspect all Products upon delivery and all Services upon performance. No claims for shortages will be allowed unless such shortages are reported to Seller within 10 days after delivery. No other claims against Seller will be allowed unless asserted in writing within 60 days after delivery or performance or, in the case of an alleged breach of warranty, within 60 days after the date within the warranty period on which the defect is or should have been discovered by Buyer. Any lawsuit or other action based upon breach or upon any other claim arising out of the Agreement (other than an action by Seller for any amount due to Seller by Buyer) must be commenced within one year from the date of the tender of delivery or performance by Seller or, in the case of a cause of action based upon an alleged breach of warranty, within one year from the date within the warranty period on which the defect is or should have been discovered by Buyer.

**10. Buyer's Obligation; Rights of Seller.** If Seller shall at any time doubt Buyer's financial responsibility, Seller may demand adequate assurance of due performance or decline to make any further shipments or provide any further Services except upon receipt of cash payment in advance or security. If Seller demands adequate assurance of due performance and the same is not forthcoming within 10 days after the date of Seller's demand, Seller may, at its option, (i) continue to defer further shipments and Services under this order and/or any other order from Buyer which has been accepted by Seller until adequate assurance is received, or (ii) cancel any order from Buyer which has been accepted by Seller and recover damages. If Buyer fails in any

way to fulfill the terms and conditions of this Agreement, Seller may defer further shipments and Services until such default is corrected or cancel this order and recover damages. Seller shall have a security interest in, and lien upon, any property of Buyer in Seller's possession as security for the payment of any amounts owing to Seller by Buyer, in addition to its statutory rights.

**11. Cancellations.** After acceptance by Seller, orders shall not be subject to cancellation by Buyer except with Seller's consent and upon terms that will indemnify Seller against all direct, incidental and consequential loss or damage.

**12. Export.** If the Products are to be exported, the Agreement is subject to Seller's ability to obtain export licenses and other necessary papers within a reasonable period. Buyer will furnish all Consular and Custom declarations and will accept and bear all responsibility for penalties resulting from errors or omissions thereon. Buyer shall not reexport the Products or any goods or items which incorporate the Products if the reexport would violate United States export laws.

**13. Conflicting Provisions Offered by Buyer.** Any terms and conditions of any purchase order or other instrument issued by Buyer, in connection with the subject matter of this Agreement, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any manner whatsoever unless accepted by Seller in writing.

**14. Waiver.** Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

**15. Other Rights or Remedies.** Except as otherwise provided herein, any rights or remedies granted hereunder to either party shall be in addition to, and not in lieu of, any other rights or remedies of such party at law or in equity.

**16. Entire Agreement.** This Agreement contains the entire agreement between Seller and Buyer and constitutes the final, complete and exclusive expression of the terms of the agreement, all prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter hereof being merged herein. By way of illustration and not limitation, Buyer's order shall be deemed to incorporate, without exception, all the terms and conditions hereof notwithstanding any order form of Buyer containing additional or contrary terms or conditions, unless Buyer shall have expressly advised Seller to the contrary in a writing apart from such order form, and no acknowledgment by Seller of, or reference by Seller to, or performance by Seller under, an order of Buyer shall be deemed to be an acceptance by Seller of any such additional or contrary terms or conditions. In the event of a written request by Buyer for additional or contrary terms or conditions, then such modifications may be made in these terms and conditions only by a written instrument signed by one of Seller's officers.

**17. Severability.** In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof.

**18. Governing Law.** This Agreement, the construction of this Agreement, all rights and obligations between the parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including all tort claims), shall be governed by the laws of the Commonwealth of Kentucky, as applicable to contracts executed and wholly performed therein. The applicability of the U.N. Convention on the International Sale of Goods is hereby excluded.

**19. Equal Opportunity Clause.** This clause applies only in the event that the Products are to be used in whole or in part for the performance of government contracts and where the dollar value of said Products exceeds, or may in any one year exceed, \$10,000:

"In connection with the performance of work under this contract, the contractor (subcontractor) agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor (subcontractor) agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause."

"The provisions of the Equal Opportunity Clause, as promulgated by Executive Order 11246 dated September 24, 1965, as amended, are incorporated herein by reference"

Effective: July \_\_\_\_\_, 2012

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