

## TERMS AND CONDITIONS

KNF Neuberger, Inc., hereinafter referred to as Seller, hereby offers to supply the items and/or services identified in the quotation, proposal, or acknowledgment expressly conditional upon the Buyer's acceptance of the following terms. Seller, by the commencement of performance, shall not prejudice its right to enforcement of these conditions.

**1. ACCEPTANCE OF ORDER:** None of the Buyer's Terms and Conditions shall alter Seller's Terms and Conditions in any respect and shall not apply to this transaction unless specifically agreed to in writing. Any Buyer terms or purchase order shall be considered only as an offer not binding on Seller unless accepted expressly in the manner prescribed in the preceding sentence notwithstanding a failure of Seller to expressly reject any such offer including commencement of performance by Seller while such offer is outstanding.

**2. MINIMUM ORDER VALUE:** The minimum acceptable value of any order is \$50.00. Buyer's accumulation of a number of items into one purchase is authorized to reach order value.

**3. FOB POINT AND SHIPMENTS:** All supplies and services are sold FOB origin and the point or origin shall be that of Seller's factory. Seller assumes no responsibility for delay, breakage, damage or loss after delivery to the carrier. Seller reserves the right to make partial shipments at its discretion.

**4. PACKAGING AND SHIPMENT:** Seller's products will be packaged in accordance with standard commercial practices for domestic shipment. Shipping charges will be paid by Buyer, in the absence of specific written instructions. Seller will select the carrier, unless otherwise agreed upon by Seller and Buyer.

**5. PAYMENT TERMS:** Terms are "net thirty (30) days" calculated from the date of receipt of invoice if credit arrangements have been approved in advance by Seller. Otherwise, payment is required before shipment or delivery in a form and arrangement acceptable to Seller.

**6. DELIVERY:** Seller will not incur any liability for any delay for any reason. Delivery dates furnished by Seller represent the best estimates of the time required to make shipment. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries.

**7. CANCELLATION, DECREASE, HOLDS:** Cancellations by Buyer will be subject to a reasonable charge, at Seller's sole discretion and based upon the state of completion for the order, costs incurred by Seller, or an amount agreed upon by Seller and Buyer, and invoiced at that amount. Decreases will be subject to a charge, at Seller's sole discretion, based upon the state of completion of the decreased units, costs incurred by Seller, or an amount agreed upon by Seller and Buyer. This amount will be invoiced, and the unit price will be adjusted to the lot size remaining on the order. Holds will be accepted for a period of 30 days without charge. Holds for longer than 30 days must be pre-approved by Seller. Indefinite holds may be subject to carry and/or cancellation charges. Furthermore, Seller reserves the right to cancel this order or any portion thereof without liability if Buyer fails to make payment as required by the terms of this order.

**8. PROPRIETARY INFORMATION:** Buyer agrees that any data, such as Seller's specifications, drawings, component sourcing, software and information (including, without limitations, designs, reports, software documentation, manuals, models, procedures, information and the like), revealed by Seller to Buyer and containing proprietary information, shall be kept in confidence by Buyer with at least the same care and safeguards as are applied to Buyer's own proprietary information. Such data shall not be duplicated and disclosed to others, or used without the written permission of Seller. These obligations shall not apply to any information which is in or comes into the public domain without violation of the agreement, or is received lawfully by Buyer from a third party subsequent to this agreement, or is developed by Buyer independently and without benefit of information received from Seller.

These restrictions and obligations relating to Seller's proprietary information shall expire seven (7) years after the execution of the contract incorporating these terms and conditions, unless otherwise agreed to in writing.

**9. LIMITATION OF LIABILITY:** The sole and exclusive remedy of Buyer and any other purchaser of the products against Seller shall be the repair or replacement without charge of such items of Seller's production as Seller agrees are defective, or the issuing of credit with respect thereto, all at Seller's option. Seller's liability with respect to any claim of any kind for loss or damage arising out of,

resulting from or concerning any aspect to the offering and sales by Seller of its products to Buyer is expressly limited to whichever of the following measures Seller, at its sole discretion, shall determine to be appropriate:

- (a) Repair of defective or nonconforming product(s)
- (b) Replacement of defective or nonconforming product(s)
- (c) Credit of defective or nonconforming product(s)

Seller's liability as aforesaid shall be applicable only as regards such defective or nonconforming products are returned to Seller within twelve (12) months of the date of sale. The remedies provided hereinabove in this paragraph shall constitute Buyer's sole and exclusive remedies for loss or damage arising out of, resulting from or concerning any aspect of the offering and sales by Seller of its products to Buyer, and Seller shall not, under any circumstances, (whether as a result of breach of contract, breach of warranty, tort or otherwise), be liable to Buyer in that regard for consequential, incidental, special, punitive, exemplary or other damages of any kind or manner, including, without being limited to, loss of profits or revenues, loss of use or of damage to associated products or equipment, costs of capital or costs of substitute products, costs of facilities or services.

**10. RELEASE/INDEMNIFICATION AND DEFENSE:** Buyer acknowledges and agrees that the product(s) purchased from Seller under this Purchase Order were manufactured in accordance with Buyer's specifications and Seller is hereby released from all claims, losses, costs, expenses, liabilities and damages of any kind whatsoever, including, but not limited to, any consequential damages, loss of profits or loss of use (including the products themselves) incurred by Buyer, any other third party or any end user. Buyer acknowledges and agrees that Seller has no duty to investigate whether the use of its product would be made dangerous by the integration of its product into a complex system designed, assembled and/or installed by Buyer or others and further acknowledges and agrees that Seller has no duty to investigate whether the use of its product would be made dangerous by the integration of its product into a complex system designed, assembled and/or installed by Buyer or others. Buyer further acknowledges and agrees that Seller has no duty to warn Buyer on the use of its product, since Buyer is fully aware of its characteristics and acknowledges that Seller's product is reasonably safe for Buyer's intended use.

To the fullest extent permitted by law, Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, agents, servants, employees, subcontractors or consultants from and against all claims, losses, copies, expenses, liabilities and damages whether direct, indirect, consequential or exemplary including, but not limited to, fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the use of Seller's product being purchased pursuant to this Purchase Order as a component part or otherwise, or any claims against Seller arising from the acts, omissions of work of others, unless it is proven in a court of competent jurisdiction that Seller is guilty of gross negligence or willful misconduct was the sole contribution cause of such claims, losses, costs, expenses, liabilities and/or damages. To the fullest extent permitted by law, the indemnification provided hereunder shall apply regardless of default, negligence, breach of warranty, or contract, or strict liability of Seller.

**11. RETURNED MERCHANDISE:** No material shall be returned to Seller without a Return of Material Authorization number. This number can be obtained by calling the Seller's Sales Department. Any goods returned to Seller without a Return Material Authorization number will not be accepted by Seller, and will be returned to Buyer freight collect. Reshipping charges on non-defective merchandise or on merchandise which has been abused by Buyer must be borne by Buyer.

**12. TAXES:** Prices referred to on the Seller's quotation or order acknowledgment are exclusive of all existing or future applicable city, state and federal taxes, fees and other public charges imposed upon the sale, purchase, shipment or use of the products. Any and all such taxes, fees, and other public charges shall be borne by Buyer, who shall promptly pay the amount thereof.

**13. DATA RIGHTS:** Seller reserves and retains all right, title, and interest in any and all intellectual property and tooling which it develops relating to the products provided, including, without limitation: data, inventions, know-how, trade secrets, and copyrightable works. Nothing in this document shall be construed as granting any rights relating to the products provided pursuant to this document, except for the right of use and resale of the products.

**14. GOVERNING LAW:** The terms and conditions stated herein shall be governed by and construed in accordance with the laws of the State of New Jersey.