



## Terms and Conditions

These Terms and Conditions apply to all sales by KNF Neuberger, Inc. ("KNF") of its products ("**Products**") to its customers (each, the "**Buyer**"), as provided in paragraph 1 below. The term "Products" includes both complete integrated products as well as spare parts and other items sold separately.

**1. TERMS OF SALE:** The binding contract between KNF and the Buyer for any purchase and sale of Products (referred to here as the "**Agreement**") shall consist solely of these Terms and Conditions, as supplemented by any arrangements specifically agreed in writing by both KNF and the Buyer. The Agreement supersedes all other agreements and understandings (both written and oral) between KNF and the Buyer with respect to the Products and the subject matter of the Agreement. Without limiting the foregoing, and notwithstanding any statements to the contrary which may be set forth in any purchase order, order confirmation or other document issued by the Buyer, there shall not be included in the Agreement between the parties (and there shall be completely disregarded) any provision set forth in any such purchase order, order confirmation or other document (whether or not the matters that are addressed in any such provision are consistent with, inconsistent with, or are not addressed in these Terms and Conditions) except to the extent explicitly agreed in writing by both KNF and the Buyer.

**2. PAYMENT TERMS:** Unless otherwise specifically agreed by KNF and the Buyer and after credit arrangements have been approved, all payments are due in full net thirty (30) days calculated from the date of receipt of invoice. All payments shall be made in United States Dollars. If the Buyer fails to pay any amount when due, then in addition to all other remedies permitted by law, all such unpaid amounts shall bear interest at an annual rate of sixteen percent (16%) per annum until paid in full.

**3. TAXES:** In addition to the purchase price for the Products set forth in any quotation or order acknowledgment issued by KNF, the Buyer shall pay all applicable sales, use, excise or other taxes imposed on the sale of the Products, unless the Buyer provides to KNF documentation evidencing the valid exemption of the Buyer from such taxes.

**4. SHIPMENTS:** All Products are sold and delivered EXWORKS (EXW) (Incoterms 2010 ©) at KNF's factory in Trenton, New Jersey. KNF assumes no responsibility for loss, damage, or delay after the carrier takes possession of the Products. KNF will select the carrier, unless otherwise agreed by KNF and the Buyer, and shipping charges will be paid by the Buyer. Products will be packaged in accordance with standard commercial practices for domestic shipment.

**5. DELIVERY:** KNF will not incur any liability for any delay in delivery for any reason. Delivery dates furnished by KNF represent the best estimates of the date on which deliveries will be made. Any delay in the delivery of any installment shall not relieve the Buyer of its obligation to accept the remaining installments.

**6. CANCELLATION; HOLDS; CHANGES:** Unless otherwise agreed by KNF in KNF's sole discretion, the Buyer shall not have any right to cancel, decrease, delay or hold all or any part of any order or any shipment. There shall not be any changes made in the Agreement unless mutually agreed in writing and signed by both KNF and the Buyer, except that KNF reserves the right to cancel all or any part of any order or shipment without liability if the Buyer fails to make payment as required.

**7. RETURNS:** Unless otherwise agreed by KNF in KNF's sole discretion or except as otherwise provided below in connection with a warranty claim, the Buyer shall not have any right to return all or any Products to KNF. In the event that KNF does agree to accept any return, the Buyer shall not return any Product until the Buyer first obtains a return authorization number from KNF. Any Products

returned to KNF without a return authorization number will not be accepted by KNF and will be returned to the Buyer freight collect.

**8. WARRANTIES:** (a) KNF warrants that the Products (1) conform to all Specifications for those Products, (2) are of sound materials and workmanship, (3) are new and unused, unless otherwise specified, and (4) do not infringe any patent, trademark, copyright, trade secret or other intellectual property right of any third party. (For the avoidance of doubt, the warranty set forth in the preceding clause (4) applies only to the form of the Products in which they are delivered to the Buyer by KNF, and that warranty does not apply to the combination or application or incorporation of KNF's Products with, or into, any of the Buyer's own products.) The foregoing warranties are referred to in this Agreement as the "**Warranties**". For these purposes, the term "**Specifications**", when used with respect to any Products, means all specifications for those Products that are mutually agreed in writing by KNF and the Buyer, including (for example) specifications relating to materials, dimensions, product performance, packaging, marking and labeling or that are otherwise provided in writing by KNF to the Buyer for the specific Product.

(b) Except as provided in the preceding paragraph (a) above, **KNF IS NOT MAKING, AND THE BUYER IS NOT RELYING ON, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.**

**9. WARRANTY REMEDIES:** (a) Warranty Period. The Warranties with respect to any Products shall remain in effect for a period of twelve (12) months after delivery of those Products to the Buyer. The warranty for any Products that are repaired or replaced under the Warranties will be the same as for the original product, and the twelve month warranty period for repaired or replaced Products shall begin on the date of shipment of those Products from KNF's facility.

(b) Notice of Warranty Claim. If at any time during the warranty period the Buyer believes that any Products do not comply with any of the Warranties, the Buyer shall promptly notify KNF. If the Buyer does not provide that notice within the warranty period, the Buyer shall not have any right to claim that those Products do not comply with the Warranties. The Buyer shall inspect the Products promptly after delivery and shall promptly notify KNF of any alleged breach of any Warranties or any errors relating to the delivery of the Products, provided that any failure to so inspect and notify shall not in any way affect the Warranties.

(c) Repairs and Replacements. Except as provided in paragraph (d) below, if within the warranty period the Buyer notifies KNF that any Products do not comply with any of the Warranties and if in fact the Products do not comply with any of the Warranties (not caused by misuse or abuse), then KNF shall, at KNF's election and expense, either (1) repair, or (2) replace, or (3) rework the Products, including having the Products shipped to KNF (at KNF's expense). The Buyer shall comply with KNF's standard procedures relating to the return of any Products; among other things, the Buyer shall not return any Products to KNF without first obtaining a return authorization number from KNF. If after a reasonable period of time KNF does not repair, replace or rework the Products so that they comply with the Warranties, KNF shall refund the full purchase price of those Products to the Buyer. If the Products do not comply with any of the Warranties (not caused by misuse or abuse), then KNF will pay the shipping charges for returning the repaired, replaced or reworked Products to the Buyer. If the Products are not covered by the Warranties (for example, if the problems with the Products were caused by misuse or abuse or if the warranty period has expired), then all charges to reship the Products back to the Buyer shall be paid by the Buyer.

(d) IP Infringement. In the event that any third party makes any claim (including the commencement of any legal action) against the Buyer,

KNF or any other party alleging in substance a breach of the Warranty set forth in clause (a)(4) in the Section above entitled "Warranties", then KNF shall have the right in its discretion either (1) to take action which will secure the right of the Buyer to continue to utilize the Products, at no additional cost to the Buyer, or (2) to modify the Products in order to eliminate the basis for such an action or claim, at no cost to the Buyer, provided that such Products, as so modified, will continue to conform to the Specifications, or (3) if neither (1) nor (2) is commercially reasonable or practicable, refund the full purchase price of the Products, without further liability of KNF.

(e) Exclusive Remedies. The remedies set forth in this paragraph (Warranty Remedies) are the **SOLE AND EXCLUSIVE** remedies for any breach of any of the Warranties or any other claim, however characterized, that any Products are defective.

**10. LIMITATION OF LIABILITY:** IN NO EVENT SHALL EITHER KNF OR THE BUYER BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOST BUSINESS OPPORTUNITY) THAT THE OTHER PARTY MAY INCUR BY REASON OF ITS HAVING ENTERED INTO OR RELIED ON THIS AGREEMENT, OR ARISING OUT OF THE PERFORMANCE OR BREACH OF THIS AGREEMENT, EVEN IF THE PARTY AGAINST WHOM A CLAIM IS MADE WAS ADVISED OR KNEW OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION SHALL APPLY REGARDLESS OF THE FORM OF THE CLAIM IN WHICH SUCH LIABILITY MAY BE ASSERTED, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

**11. PROPRIETARY INFORMATION:** As part of the commercial arrangements relating to the Products, the Buyer may disclose some of its proprietary information to KNF (including the design and specifications of Buyer's own products and its customer requirements) and KNF may disclose some of its proprietary information to the Buyer (including KNF's specifications, drawings, component sourcing, designs, software documentation, manuals, models and procedures). Each of the parties agrees that the proprietary information received from the other party shall be held in strict confidence by the receiving party with at least the same degree of care and safeguards as are applied to the receiving party's own proprietary information. Without limiting the foregoing, such proprietary information shall not be duplicated or disclosed to others and shall not be used for any reason without the written permission of the disclosing party other than for the purpose of the purchase and sale of the Products. Moreover, the receiving party shall not have any license or other rights in or to the disclosing party's proprietary information except for the purpose of performing its contractual obligations with respect to the Products. The foregoing obligations shall not apply to any information which is in or comes into the public domain without violation of the foregoing obligations, or is received lawfully by the receiving party from a third party who has the unrestricted right to disclose that proprietary information, or which is developed by the receiving party independently and without benefit of any information received from the disclosing party.

Without limiting the foregoing, KNF reserves and retains all right, title, and interest in any and all intellectual property and tooling which it develops relating to the Products, including without limitation all data, inventions, know-how, trade secrets, copyrightable works and other intellectual property rights. Nothing in the agreement between the parties shall be construed as granting to the Buyer any of KNF's rights relating to the Products.

**12. INCORPORATION OF PRODUCTS INTO BUYER'S OWN PRODUCTS:** The Buyer acknowledges that the Buyer is purchasing the Products so that the Products can be integrated (as a component, part or otherwise) into and used within the Buyer's process or a separate product or system that is designed, assembled, installed and/or sold by the Buyer or others (referred to here as the "**Buyer's Product**"). The Buyer also acknowledges that either the Buyer selected the Product covered by this Agreement in the Buyer's sole discretion without input from KNF, or the Buyer selected the Product after obtaining information or guidance from KNF, or KNF

manufactured or otherwise supplied the Product in accordance with specifications provided by the Buyer. Regardless of the means by which the Buyer selected and/or purchased the Product, the Buyer specifically acknowledges and agrees that KNF does not have any independent duty to determine whether the Buyer's selection of the Product is appropriate, correct or safe for the integration into or use with the Buyer's Product or whether the use or operation of the Product would be made dangerous or compromised in any manner by the integration of the Product into the Buyer's Product. The Buyer further acknowledges and agrees that the Buyer is fully aware of the characteristics of the Products, that the Products are reasonably safe for the Buyer's intended use, including without limitation the integration of the Product into the Buyer's Product, and that KNF does not have any duty to warn the Buyer with respect to the integration or use of the Product with the Buyer's Product. As a result, to the fullest extent permitted by law, the Buyer hereby releases, and shall indemnify, defend and hold harmless KNF and its officers, directors, agents, servants, employees and subcontractors from and against all claims, losses, costs, 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 or integration of KNF's Product with or into any Buyer's Product or any claims against KNF arising from the acts or omissions of any other parties relating to or arising out of the Buyer's Product, unless it is proven in a court of competent jurisdiction that KNF is guilty of gross negligence or willful misconduct and that KNF's gross negligence or willful misconduct was the sole cause of such claims, losses, costs, expenses, liabilities and/or damages. To the fullest extent permitted by law, the foregoing release and indemnification shall apply regardless of the nature or characterization of the claim made against KNF, including without limitation breach of contract, negligence or other tort, breach of warranty, or strict liability.

**13. FORCE MAJEURE:** No failure or omission by either KNF or the Buyer in the performance of any obligation under the Agreement (other than the Buyer's obligations to pay the amounts due to KNF under this Agreement) shall be deemed a breach of the Agreement, nor shall it create any liability, if the same arises from any cause or causes beyond the control of the affected party, including but not limited to any act of God; acts or omissions of any government; any rules, regulation, or orders issued by any governmental authority or by any officer, department, agency or instrumentality hereof; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; terrorist attack; riot; invasion; any suspension, interruption, failure or error in the operation or use of the Internet or any components of the Internet; strikes; and lockouts.

**14. ARBITRATION:** If there is any controversy, claim or dispute arising out of the Agreement or the Products, including any breach or alleged breach of the Agreement (a "**Claim**"), that Claim shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association which are then in effect. Three arbitrators shall conduct the arbitration in Trenton, New Jersey. The arbitrators must be knowledgeable or experienced in matters involving mechanical equipment. The costs of arbitration shall be borne as assessed by the arbitrator(s), except that each party shall pay the fees and expenses of its own legal counsel. Judgment on the award(s) rendered by the arbitrators may be entered in any court having applicable jurisdiction, and execution of that award may be had in any court of competent jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement.

**15. GOVERNING LAW; NO ASSIGNMENT:** The Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. This Agreement and the rights and obligations of the parties may not be assigned or transferred, in whole or in part, by either party without the prior written consent of the other party.