



## STANDARD PURCHASE TERMS & CONDITIONS

**1. APPLICABILITY.** All orders are subject to these Terms and Conditions which include any special terms and conditions specified on the quote, order acknowledgment form, or Kalas product price list. These Terms and Conditions of sale (these "Terms") are the only terms and conditions which govern the sale of goods by KALAS Manufacturing ("Seller") to buyer ("Buyer") and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms.

**2. THIS DOCUMENT CONTROLS.** THE AGREEMENT BETWEEN THE PARTIES IS LIMITED TO THESE TERMS AND SHALL BE FORMED UPON SENDING OF AN INVOICE BY SELLER TO BUYER. ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY BUYER IN ANY PURCHASE ORDER OR OTHER DOCUMENTS ARE DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM IS HEREBY GIVEN. ANY SUCH PROPOSED TERMS AND CONDITIONS SHALL BE VOID, AND THESE TERMS SHALL CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS AND CONDITIONS OF THE AGREEMENT BETWEEN THE PARTIES. NEITHER SELLER'S ACKNOWLEDGMENT OF A PURCHASE ORDER NOR SELLER'S FAILURE TO OBJECT TO CONFLICTING, DIFFERENT, OR ADDITIONAL TERMS AND CONDITIONS IN A PURCHASE ORDER SHALL BE DEEMED AN ACCEPTANCE OF SUCH TERMS AND CONDITIONS OR A WAIVER OF THE PROVISIONS HEREOF.

**3. PRICES.** Prices shown on quotation are Sellers' prices in effect on the date the quotation is made or the order is acknowledged. HOWEVER, Shipments will be billed at Seller's prices in effect on the date the shipments are made, unless otherwise specified as a special term and condition on the face of: the quote, order acknowledgment, Kalas product price lists or invoice. Issuance of an order against a numbered quotation indicates acceptance of the listed wire and cable characteristic and descriptions. Orders containing any deviation from quoted specification nullifies the price herein. Special tools, dies or fixtures, other than standard in Kalas' product line, that are necessary for the manufacture of a customer's product and not supplied by Buyer may be charged to the customer and indicated previously in the quotation. All special tools, dies, or other fixtures not supplied by Buyer shall be and remain the Seller's property and in the Seller's sole possession and control, and any changes made by Seller therefore, shall be for the use of such equipment only. When for a period of one year, no orders or releases are accepted from the Buyer for products to be made with such tools, dies or fixtures, Seller may make such disposition thereof, as it desire without liability to Buyer. Prices do not include any sales, use, excise,

privilege, or other taxes or assessments now or hereafter imposed or levied by or under the authority of any foreign, federal, state, or local law, rule, or regulation concerning the goods or the manufacture or sale thereof. Buyer must submit a state sales tax exemption form. If Seller pays any such taxes or assessments, Buyer shall, upon demand, immediately reimburse Seller for such amounts.

**4. PAYMENT.** All payments are due net 30 days from the date of invoice unless otherwise specified as a Term and Condition. All orders are subject to acceptance in writing by Seller. No discounts shall be taken unless specifically allowed in writing by Seller. All amounts due to Seller from Buyer shall be paid without abatement, deduction, or setoff. The date of payment of an invoice shall be the date the payment is received by Seller at the location designated on the invoice. If Buyer fails to make any payment when due, Buyer shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, attorneys' fees and costs. If, in Seller's judgment, the financial condition of Buyer does not justify continuance on the terms of payment above, Seller may require full or partial payment in advance or otherwise adjust the terms including ceasing to supply Buyer.

**5. FREIGHT.** If Buyer has Prepaid Delivery terms, the goods shall be shipped FOB Destination. Buyer shall assume title and control of the goods at the time of receipt and receiver signs the Bill of Lading. Proof of Delivery must be signed complete and if loss or damage occurs, the Bill of Lading must be documented as such. If Bill of Lading is not signed complete the Buyer is responsible. Seller shall assume the risk of transportation and is entitled to route the shipment. Seller is responsible for filing all claims for loss or damage based upon notated bill of lading and shall make such filings in accordance with these Terms. If Buyer has Collect Delivery terms, the goods shall be shipped FOB Origin. Buyer shall assume title and control of the goods at the time the carrier signs the Bill of Lading. Buyer shall assume the risk of transportation and is entitled to route the shipment. Buyer is responsible for filing all claims for loss or damage and shall make such filings in accordance with these Terms.

**6. DELIVERY.** Delivery and shipment dates are estimates only, and do not guarantee shipment or delivery on or by such dates. If shipment is made per the estimated shipment date, and Buyer is unable to accept delivery, then storage, demurrage or extra unloading charges may be incurred and billed to Buyer's account.

**7. INSPECTION.** Buyer shall inspect the goods upon arrival, and Buyer shall within 30 days after inspection notify Seller

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4320 North Lamb Blvd.  
Suite 300,  
Las Vegas, Nevada 89115

**TULSA WAREHOUSE**  
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in writing of any claims that the goods do not conform to any specifications expressly agreed to by Seller. Failure to give such written notice during such period will constitute satisfactory shipment by Seller and irrevocable acceptance by Buyer of all goods.

**8. CANCELLATION.** An Order may be canceled, partially or entirely, prior to shipment by Buyer only upon written request and written approval by Seller up until six weeks prior to shipment; however, such cancellation if approved by Seller may include a cancellation fee based on the materials and work incurred on the order at the time of the approved request. Orders may not be canceled after completion unless Seller agrees in writing.

**9. CHANGES.** Changes in specifications relating to any goods or changes in delivery schedules or reschedules of orders are not permitted unless Seller has accepted same in writing, has determined the additional charge to be made, if any, and the same has been paid by the Buyer. Seller may at its option modify Buyer's order where necessary by making any of the following changes: (a) substituting the latest or correct good number or description set forth on the order; (b) substituting Seller's prices in effect as applicable to the order for the prices set forth in Buyer's order; (c) substituting an estimated delivery schedule which is reasonable (considering Seller's stock availability and lead time) for the delivery schedule set forth on the order; and (d) correcting any stenographic or typographical error on any document.

**10. RETURNS.** Any good may not be returned without prior written authorization by Seller and compliance with Seller's return policies and procedures. Requests to return goods must be made within 30 days after receipt of goods by Buyer. If written approval is not received before returning the goods, the goods will be returned to the Buyer at the Buyer's expense. Goods must be in like-new condition, in their original packaging and able to be returned to stock. Goods that are made to order, discontinued or custom are not returnable for credit. Returns are subject to a 25% restocking fee and must be shipped prepaid.

**11. QUANTITY TOLERANCE.** A quantity or weight variation of +/-10% on item quantities shall be allowed unless otherwise specified in writing between the parties. These variations are industry standards and Buyer acknowledges these variations are within specified ranges. The Buyer has no right to reject or return on account thereof without written record at time of order.

**12. SELLER WARRANTIES.** Seller's obligation hereunder is to provide goods in accordance with these Terms. EXCEPT AS

EXPRESSLY STATED IN SELLER'S WRITTEN WARRANTY (IF ANY), SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE GOODS, AND SHALL HAVE NO LIABILITY FOR LOSS OF ANTICIPATED PROFITS OR CONSEQUENTIAL OR SPECIAL DAMAGES. BUYER WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, NOT EXPRESSLY CONTAINED UNDER THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**13. LIMITATION OF LIABILITY.** TO THE EXTENT PERMITTED BY LAW, SELLER SHALL NOT BE LIABLE IN CONNECTION WITH THIS SALE OF GOODS FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, BASED ON TORT, CONTRACT OR OTHER LEGAL THEORY, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) ANY DAMAGES WHATSOEVER IN EXCESS OF AN AMOUNT EQUAL TO THE PURCHASE PRICE OF THE GOODS PROVEN TO BE DEFECTIVE. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IS BUYER'S EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT THE REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

Buyer understands and agrees that the limitations on liability set forth under these Terms are being relied upon by Seller in determining the costs of goods provided by Seller to Buyer.

Buyer understands and agrees that protection for any costs, expenses, losses and damages arising under these Terms is Buyer's sole responsibility and that it is Buyer's responsibility to obtain and maintain insurance coverage for such costs, expenses, losses and damages.

**14. INDEMNIFICATION.** Buyer shall defend, indemnify and hold Seller, its affiliates and their respective officers, directors, members, managers, representatives, agents and employees harmless from and against all claims, suits, demands, losses, liabilities, damages (including injury and death) and expenses (including reasonable attorneys' fees), arising out of or relating to: (a) Buyer's or its agents' provided specifications, design, structure, operation, material or method of making goods including without limitation, any resulting violation of intellectual property or proprietary rights; (b) Buyer's use, misuse or disposal of goods; (c) Buyer's non-compliance with any law; (d) breach of these Terms by Buyer; and (e) goods subjected to: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the goods; (v) repairs or modifications made to all or part of the goods without the prior written consent of Seller; or (vi) a use or application other than or

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varying in any degree from the specifications and Seller's instructions.

**15. INTELLECTUAL PROPERTY RIGHTS.** Seller reserves all patent, copyright, proprietary design, manufacturing, reproduction and sale rights to all goods that Seller manufactures and sells. Buyer may not obtain any patent, trademark or copyright protection for any goods, trademarks or other intellectual property created or represented by Seller. Any sample, drawing, design, specification, model or other proprietary information supplied to Buyer by Seller is confidential and a proprietary trade secret which must be kept confidential. Buyer may not copy, reproduce, or distribute Seller's drawings, designs, specifications, samples, models or information to any third party without the written permission of Seller. Buyer may not appropriate any sample, drawing, design, specification or model for Buyer's own use or for resale and agrees to return all originals and copies to Seller.

**16. SECURITY INTEREST.** Failure by Buyer to make any payment due hereunder, or to give proper shipping instructions upon request, or to accept delivery at times stated, or to comply with all terms of any contract between Buyer and Seller, shall in each case give Seller, in addition to all other available remedies, the right at its option to deduct any undelivered goods from the total goods to be furnished whether under these Terms or any other contract between Buyer and Seller. Buyer hereby grants to Seller a security interest (which shall be deemed a purchase money security interest) in all goods provided to Buyer by Seller to secure payment by Seller for all such goods. In the event of nonpayment by Buyer of any debt, obligation or liability now or hereafter incurred or owing by Buyer to Seller, Seller shall have all rights of, and all of the remedies available to, an unpaid secured creditor under the applicable state Uniform Commercial Code (UCC), and all other rights and remedies available at law or in equity. Buyer agrees, and, to the extent permitted by law, Seller is authorized to, execute and file whatever documents are necessary, including security agreements or financing statements, to evidence and perfect the security interest granted by this paragraph.

**17. FORCE MAJEURE.** Seller shall not be liable because of unforeseen circumstances or causes beyond its control, including, without limitation, strike, lockout, embargo, riot, war, act of terrorism, fire, act of God, accident, failure or breakdown of components necessary for order completion, any subcontractor, supplier or Buyer caused delays, inability to obtain (at any prices or at all) labor, materials or

manufacturing facilities, or compliance with any law, regulation or order.

**18. TERMINATION.** Seller shall have the right to cease work or terminate these Terms or any other agreement entered into by Buyer and Seller, in whole or in part, at any time, without liability, if: (a) Buyer breaches or defaults under these Terms or any other agreement it has with Seller; (b) a petition under any applicable law relating to bankruptcy, insolvency or reorganization is filed by or against Buyer; (c) Buyer executes an assignment for benefit of creditors; (d) a receiver is appointed for Buyer or any substantial part of its assets; or (e) Seller shall have any reasonable ground for insecurity with respect to Buyer's ability to perform and Buyer is unable to provide Seller with adequate assurance within ten days after written request therefore by Seller. In all cases, Seller's rights are cumulative, are not exclusive and are in addition to all other rights and remedies it may have at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.

**19. APPLICABLE LAW, JURISDICTION AND VENUE.** These Terms are governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to its law or the choice of laws. Any suit or claim of any kind against or involving Seller arising from this sale must be filed in the court of Common Pleas of Lancaster County, Pennsylvania, or in the U.S. District Court for the Eastern District of Pennsylvania, and Buyer agrees that such courts shall have sole and exclusive jurisdiction and venue of any such suit.

**20. MODIFICATION/WAIVER.** If, on occasion, Seller agrees to waive or modify any provision of these Terms, this shall not be construed as a continuing or permanent waiver. No part of these Terms or any other agreement entered into by Buyer and Seller may be modified or waived orally; a written acknowledgment signed by Seller accepting such change is required.

**21. NO ASSIGNMENT.** These Terms may not be assigned by Buyer directly or indirectly (including, without limitation, by merger or sale of stock) without the prior written consent of Seller.

**22. SAVINGS CLAUSE.** If any part of these Terms is held void or unenforceable, such part, to the extent void or unenforceable, will be treated as severable, leaving valid the remainder of these Terms which shall be deemed revised so as to remain enforceable to the greatest extent possible consistent with

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