

## Purchase Order Terms and Conditions

**APPLICABILITY.** This purchase order is an offer by Kaiser Premier LLC ("Kaiser") for the purchase of the goods specified on the face of this purchase order (the "Goods") from the party to whom the purchase order is addressed (the "Seller") in accordance with and subject to these terms and conditions (the "Terms"; together with the terms and conditions on the face of the purchase order, the "Order"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order.

**DELIVERY DATE; DELIVERY LOCATION.** Seller shall deliver the Goods in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "Delivery Date"). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Kaiser may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Kaiser against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. All Goods shall be delivered to the address specified in this Order (the "Delivery Location") during Kaiser's normal business hours or as otherwise instructed by Kaiser.

**SHIPPING TERMS; PACKAGING.** Delivery shall be made in accordance with the terms on the face of this Order. If no shipping terms are specified, delivery shall be made F.O.B., Kaiser's facility in Fort Morgan, Colorado, as defined by the Colorado Uniform Commercial Code. Seller shall provide Kaiser all shipping documents, including the commercial invoice, packing list, bill of lading and any other documents necessary to release the Goods to Kaiser. All goods shall be packed for shipment according to Kaiser's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller shall comply with all applicable export and import laws of all countries involved in the delivery of the Goods to Kaiser and assumes all responsibility for any government export or import or other customs clearance in connection with the delivery of the Goods.

**TITLE; RISK OF LOSS.** Title passes to Kaiser upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

**INSPECTION AND REJECTION OF NONCONFORMING GOODS.** Kaiser has the right to inspect the Goods on or after the Delivery Date. Kaiser, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective even after the Delivery Date. If Kaiser rejects any portion of the Goods, Kaiser has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Kaiser requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. Any inspection or other action by Kaiser under this provision shall not reduce or otherwise affect Seller's obligations under the Order, and Kaiser shall have the right to conduct further inspections after Seller has carried out its remedial actions.

**PRICE; PAYMENT TERMS; SETOFF.** The price of the Goods is the price stated in this Order (the "Price"). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. Seller shall issue an invoice to Kaiser on or within thirty (30) days after the completion of delivery and only in accordance with the Terms. Kaiser shall pay all properly invoiced amounts due to Seller under the terms stated in this Order, except for any amounts disputed by Kaiser in good faith. All payments hereunder must be in US dollars. Without prejudice to any other right or remedy it may have, Kaiser reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Kaiser to Seller.

**WARRANTIES.** Unless otherwise specified in this Order, Seller warrants to Kaiser that for a period of twelve (12) months from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. Seller agrees to repair or replace any nonconforming Goods within thirty (30) days of notice of such nonconformance by Kaiser. If Seller has not repaired or replaced such nonconforming Goods within thirty (30) days of such notice, Kaiser shall have the right to repair, replace, or have a third-party repair or replace such Goods and charge Seller the costs of such repair or replacement. The foregoing warranty, and any other warranty provided by Seller to Kaiser specified in this Order, shall be assignable by Kaiser to any Kaiser customer to which the Goods are sold, leased or otherwise transferred without the further consent of Seller. Seller represents and warrants that neither it, nor any of its owners, employees, or subcontractors (i) is included on any list of prohibited parties maintained by the Office of Foreign Assets Control or any similar list or is subject to sanctions imposed by the United States government, and (ii) has made any payment to any party in violation of the United States Foreign Corrupt Practices Act or the United Kingdom's Bribery Act of 2010. Seller further warrants that it is in compliance with and shall comply with all applicable foreign and domestic laws, regulations and ordinances. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Kaiser. These warranties are cumulative and in addition to any other warranty provided by law or equity, or by Seller. Any applicable statute of limitations runs from the date of Kaiser's discovery of the noncompliance of the Goods with the foregoing warranties.

**INDEMNIFICATION.** Seller shall defend, indemnify and hold harmless Kaiser and its subsidiaries, affiliates, successors or assigns and their respective directors, managers, officers, shareholders, members, employees, agents and Kaiser's customers (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers arising out of or occurring in connection with (i) the Goods, (ii) Seller's negligence or willful misconduct, (iii) Seller's breach of the Terms, or (iv) any claim that Kaiser's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without Kaiser's or Indemnitee's prior written consent.

**TERMINATION.** Kaiser may terminate this Order, in whole or in part, at any time with or without cause for undelivered Goods. In addition to any remedies that may be provided under these Terms, Kaiser may terminate this Order with immediate effect upon written notice to the Seller, if Seller (i) has not performed

or complied with any of these Terms (either before or after the acceptance of the Goods), in whole or in part, or (ii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. If Kaiser terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Kaiser prior to the termination.

**KAISER'S PROPERTY.** All patterns, designs, molds, drawings, specifications, logos, trademarks, copyrights, trade secrets, inventions, other data, intellectual property, papers, processes, and improvements to any of the foregoing and the like furnished by Kaiser ("Kaiser Property") to Seller in connection with this Order remain the property of Kaiser. In the event the Goods incorporate any Kaiser Property, Seller is granted a non-exclusive, non-transferable, non-sublicensable, and non-assignable license required only for the production of Goods under this Order and shall use the Kaiser Property only for that purpose. Except for this license, no right, interest, ownership, or privilege of use of the Kaiser Property shall inure to the benefit of Seller.

**CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information of Kaiser, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Kaiser to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Kaiser in writing. Upon Kaiser's request, Seller shall promptly return all documents and other materials received from Kaiser. Kaiser shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (i) in the public domain; (ii) known to the Seller at the time of disclosure; or (iii) rightfully obtained by the Seller on a non-confidential basis from a third party who is not under any obligation of confidentiality to Kaiser.

**NOTICES.** All notices shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or electronic communication (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid).

**FORCE MAJEURE.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable.

**MISCELLANEOUS.** Seller may not assign or delegate any of its rights or obligations under this Order without the prior written consent of Kaiser. Any purported assignment or delegation in violation hereof shall be null and void. The relationship between the parties is that of independent contractors. Kaiser's failure to enforce any provision of these Terms will not be construed as a waiver of such provision nor affect the validity of these Terms or Kaiser's right to enforce any provision thereafter. Each provision of these Terms is severable and if any provision will be finally determined to be invalid, illegal, or unenforceable in any jurisdiction, the remaining provisions will not be affected thereby. No amendment, waiver, modification of this Order shall be valid unless in writing signed by both parties. Kaiser's rights

under this Order are in addition to, and not in lieu of, any other remedies available under the Uniform Commercial Code, at law or in equity. This Order is governed by and subject to the laws of the state of Colorado without regard to conflict of law principles. The District Court of the City and County of Denver, State of Colorado, shall have exclusive jurisdiction and shall be the exclusive venue for any and all controversies and claims arising out of or relating to this Order. This Order is for the sole benefit of the parties hereto their respective successors and permitted assigns, and the Indemnitees, and nothing herein, express, or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Warranties, Indemnification, Confidentiality, and Miscellaneous.