



## KW Plastics and KW Plastics Recycling Division

Troy, Alabama

TERMS AND CONDITIONS OF SALE ("Contract") with KW Plastics and KW Plastics Recycling Division, ("Seller")

1. If the Seller arranges for the delivery of goods covered hereunder (the "Goods") are sold on an F.O.B. delivery point basis. The delivery occurs, and title and risk of loss to the Goods passes, from the Seller to Buyer at the delivery point. Prices are those contained on the Seller's invoice. Freight will be prepaid. Buyer agrees to reimburse Seller for all taxes, excises or other charges that Seller may be required to pay to any government (federal, state, or local) upon the sale, production or delivery of the Goods. Buyer hereby (i) agrees to comply with U.S. export control and economic sanctions laws and will not export, re-export or otherwise transfer the Goods, or any technical information disclosed to Buyer concerning the Goods, in violation of these laws, and (ii) covenants that these Goods are not specifically intended for shipment to, transshipment through, or incorporation into products to be shipped to Iran, Sudan, or Cuba, the governments of those respective countries, or to entities established under the laws of those countries.
2. If the Buyer arranges for the delivery of goods covered hereunder (the "Goods") are sold on an F.O.B. ship point basis. Delivery occurs, and title and risk of loss to the Goods passes, from the Seller to Buyer at the ship point. Prices are those contained on the Seller's invoice. Freight will be paid by the buyer. Buyer agrees to reimburse Seller for all taxes, excises or other charges that Seller may be required to pay to any government (federal, state, or local) upon the sale, production or delivery of the Goods. Buyer hereby (i) agrees to comply with U.S. export control and economic sanctions laws and will not export, re-export or otherwise transfer the Goods, or any technical information disclosed to Buyer concerning the Goods, in violation of these laws, and (ii) covenants that these Goods are not specifically intended for shipment to, transshipment through, or incorporation into products to be shipped to Iran, Sudan, or Cuba, the governments of those respective countries, or to entities established under the laws of those countries
3. All Goods are payable in U.S. currency at P.O. Drawer 707, Troy, Alabama 36081. Sellers credit terms require payment of each invoice be received by the applicable due date or a delinquency charge may be imposed on the unpaid amount.
4. Seller will use commercially reasonable efforts to ship within time indicated, and Buyer agrees that no claim will be made for delays in shipment. In the event Buyer fails to unload and release to the carrier any railroad car furnished or arranged by Seller within thirty (30) days, Buyer agrees to any detention charges in accordance with Sellers policy in effect at the time.
5. Buyer will examine "the goods" promptly upon receipt of each shipment and notify Seller of any off-specification goods, shortfall in delivery, or non-receipt of goods. Seller will not be responsible for any variation in quality or quantity unless Buyer gives Seller written notice of a claim of such variation within 10 days after receipt of the shipment. Buyer's failure to give notice of any such claim will constitute an unqualified acceptance of the goods and a waiver by Buyer of all claims with respect thereto. Goods will not be accepted for return without first obtaining the prior written authorization of Seller.

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6. Notwithstanding anything to the contrary herein (or on the face hereof), Seller has the right to require cash in advance before making shipment. If Buyer fails to fulfill any terms of any order, purchase or payment, or Seller has reasonable doubt, in its sole discretion, of the ability of Buyer to make payments when due, Seller may at its option either defer any further shipments on any order until such default is made good or treat such default as a final refusal to accept any further shipments on any order and effect cancellation. Seller, however, has the right, even on such cancellation, to require payment for Goods manufactured pursuant to the order.
7. Seller warrants that, at the time of delivery of the Goods to Buyer, the Goods will meet Sellers specifications. Seller further warrants that it will convey a good title to the Goods to Buyer. THE FOREGOING WARRANTIES ARE EXCLUSIVE, AND SELLER DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, AND BUYER EXPRESSLY WAIVES, ANY OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, REGARDLESS OF WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ALLEGEDLY ARISING FROM ANY USAGE OR FROM ANY COURSE OF DEALING.
8. **Buyer agrees to indemnify, defend, hold harmless, release and forever discharge Seller, its agents, servants and/or employees, from and against any and all claims, demands, damages, liabilities, suits, attachments, judgments, losses, penalties, fines, settlements and/or expenses, including attorneys fees incident hereto, for personal injury (including illness or disease) to or death of any person (including employees of Buyer) or for damage to or destruction of any property, resulting directly or indirectly from any and all wrongful or negligent acts or omissions of Buyer in its acts or omissions performed under this contract, including the transportation of any and all Goods (by railcars, trucks or otherwise) under this contract. On behalf of Seller, and its agents, servants and/or employees, and in their name, Buyer will handle and/or defend, at its sole expense, any claims or litigation in connection with this Contract.**

SELLERS TOTAL LIABILITY ARISING FROM THIS CONTRACT FOR ANY CLAIMS OF ANY NATURE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, CONTRIBUTION, STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE PURCHASE PRICE OF THE PORTION OF THE GOODS RELATED TO THE CLAIM. THIS CONSTITUTES SELLERS MAXIMUM LIABILITY, EVEN IF THE GOODS HAVE BEEN PLACED BY AN END-USER OR USED IN OTHER PROJECTS. IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR ANY LOST PROFITS OR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, CONTINGENT, AND EXEMPLARY OR PUNITIVE DAMAGES INCURRED BY BUYER.
9. Neither party will be in breach of its obligations hereunder to the extent that performance is prevented or delayed as a result of any of the following contingencies: (i) any cause beyond the reasonable control of the party concerned; (ii) labor disturbance, whether or not involving the employees of the party concerned or otherwise, and whether or not the disturbance could be settled by acceding to the demands of a labor group; (iii )compliance with a request or order of a person purporting to act on behalf of any government or governmental department or agency(including but not limited to EPA and OSHA); or (iv) shortage in raw materials, transportation, power, manufacturing capacity, etc., from a party's then-contemplated source of supply. Performance will be excused as provided above even though the occurrence of the contingency in question may have been foreseen or foreseeable at the time of contracting or may subsequently become foreseeable.

10. This Contract is governed as to all matters whatsoever, whether of validity, interpretation, obligation, or otherwise, exclusively by the laws of the State of Alabama without regard to any principles regarding conflicts of law.
11. Seller's acceptance of Buyer's order is expressly made conditional on Buyer's assent to the terms and conditions set forth herein, notwithstanding the provisions contained in any purchase order, acknowledgement, acceptance or other document of Buyer. The terms and conditions contained in this Acknowledgement constitutes the entire Contract of sale and purchase of the Goods and may not be amended or otherwise altered, except by written instrument signed by the parties. In the event the terms in this Contract conflict with any competitive writing, the terms of this Contract govern. Notwithstanding any terms and conditions that any be contained in any purchase order, acknowledgement, acceptance, or other form of Buyer, and notwithstanding Sellers manufacturing and delivery of the Goods, each delivery of Goods is deemed to be only on the terms and conditions contained in this Acknowledgement except as they may be amended or otherwise altered in accordance with the preceding sentence.
12. **Notwithstanding any of the other indemnities or releases contained in this Contract, Buyer will indemnify, defend and hold Sellers, its parents, subsidiaries, affiliates, partners, co-ventures, and their respective directors, officers, employees and agents, harmless from and against any and all claims, demands, costs and expenses (including without limitation court costs, litigation expenses, and attorneys fees) for infringement of any patent, copyright, or trademarks as a result of Buyers, its subcontractors or agents use of any patented Goods or copyrighted processes, compositions, machines or articles of manufacture; provided, that any indemnified party has the right to be represented by its counsel and to participate in the defense of any action relating to the infringement in which the indemnified party may be a defendant.**
13. Determination of the suitability of the Goods furnished hereunder for any use by the Buyer is the Buyers sole Responsibility and Seller shall have no responsibility in connection therewith. Buyer acknowledges that it is familiar with proper procedures for the safe handling and use of the Goods, and that there may be hazards associated with the use of the Goods, and that it will take all steps necessary to warn and/or inform its employees, contractors, agents and customers of the procedures and hazards. BUYER AGREES TO INDEMNIFY SELLER FROM ANY CLAIM OR LIABILITY WHATSOEVER STEMMING FROM, OR RELATED TO, BUYERS FAILURE TO WARN OR EMPLOY PROPER PROCEDURES, OR OTHERWISE TO COMPLY WITH THIS SECTION.
14. ANY TECHNICAL ADVICE OR ASSISTANCE FURNISHED BY SELLER TO BUYER WITH RESPECT TO THE SELECTION OR USE OF THE GOODS DELIVERED TO BUYER HEREUNDER WILL BE GIVEN AND ACCEPTED AT BUYER'S SOLE RISK, AND SELLER WILL HAVE NO LIABILITY WHATSOEVER FOR THE USE OF, OR RESULTS OBTAINED FROM, SUCH ADVICE OR ASSISTANCE.
15. BUYER SHALL COMPLY WITH ALL FEDERAL, STATE OR LOCAL LAWS, ORDINANCES, RULES AND REGULATIONS APPLICABLE TO ITS PERFORMANCE UNDER THIS ORDER, INCLUDING WITHOUT LIMITATION, ALL U.S. EXPORT CONTROL AND U.S. ECONOMIC SANCTIONS LAWS, AND SHALL INDEMNIFY KW PLASTICS AND KW PLASTICS RECYCLING DIVISION AGAINST ANY LIABILITY BY REASON OF SELLER'S FAILURES TO SO COMPLY.