

## TERMS AND CONDITIONS OF PURCHASE

**Agreement.** All purchases of products, materials, Goods, or services ("Goods") by Kendrion (Mishawaka) LLC ("Kendrion (Mishawaka)") are governed by and subject to these terms and conditions, as amended from time to time by Kendrion (Mishawaka). These standard terms and conditions form a binding agreement between Kendrion (Mishawaka) and the seller ("Seller") upon Seller's acceptance of Kendrion (Mishawaka)'s Purchase Order (the "PO"), either by signing and returning the attached acknowledgement, commencement of performance, or shipping or tendering delivery of any Goods (the "Agreement"). Acceptance of Kendrion (Mishawaka)'s PO is limited to acceptance of its express terms and conditions. There are no other terms of agreement. No revisions to the PO shall be valid unless in writing and signed by Kendrion (Mishawaka)'s authorized representative. Kendrion (Mishawaka) rejects any terms or conditions stated by Seller that are additional to or in conflict or inconsistent with this Agreement, and any such terms or conditions shall be without force or effect, unless accepted in writing signed by Kendrion (Mishawaka)'s authorized representative. This Agreement shall govern notwithstanding any conflict with Seller's acceptance, acknowledgment, or other stated terms.

**Pricing & Discounts.** Prices, including without limitation production costs, transportation charges, packaging, drayage, insurance, taxes, tariffs, customs duties, and any other cost, specified on any PO accepted by Seller shall not be subject to change without Kendrion (Mishawaka)'s written consent. If Prices are omitted from the PO, Seller shall advise Kendrion (Mishawaka) of the Prices to be billed as soon as possible and before Seller's manufacture, procurement, and shipment. No Prices shall apply unless accepted by Kendrion (Mishawaka) in writing. Notwithstanding applicable Prices, Seller shall give Kendrion (Mishawaka) the benefit of any price decline thru the later of the specified shipping date or the actual shipping date. If a discount is allowed for payment within a specified time, the time for making payment so as to obtain such discount will not begin to run until the date the invoice or Goods are received by Kendrion (Mishawaka), whichever is later. However, if an invoice or Goods are returned for correction, the discount period will not begin to run until Kendrion (Mishawaka) receives the corrected invoice or the Goods, whichever is later. The postmark date of any payments shall be the date used to determine whether payment was made within the specified time period to obtain the discount.

**Delivery & Shipment.** Quantities must equal the exact amount and type ordered unless otherwise agreed in writing by Kendrion (Mishawaka). At Kendrion (Mishawaka)'s discretion, overshipments will be returned at Seller's expense. All Goods shall be packaged by Seller in suitable containers for protection in shipment and storage, in accordance with good commercial practices, and such Goods and/or packages shall be properly and clearly labeled with Kendrion (Mishawaka)'s PO and identification numbers, a description of the Goods, manufacturing dates, part numbers, and the quantity of items contained in each package. A copy of the package slip shall be separately mailed or emailed directly to Kendrion (Mishawaka). Kendrion (Mishawaka)'s count will be accepted as final on all shipments not accompanied by packing lists. All shipments to Kendrion (Mishawaka) shall be FOB Kendrion (Mishawaka)'s facility or other place of destination as may be specified by Kendrion (Mishawaka) on its PO. Seller shall bear all risk of loss until acceptance of delivery by Kendrion (Mishawaka). Title to Goods shall pass upon delivery, or sooner if otherwise specified in the PO. Seller shall strictly comply with delivery instructions (including schedule) stated on the PO. Seller shall not make partial shipments or deviate from Kendrion (Mishawaka)'s shipping instructions without its prior written consent. If to comply with Kendrion (Mishawaka)'s required delivery date it becomes necessary for Seller later to ship by a more expensive way than agreed through the PO, any increased transportation costs resulting therefrom shall be paid by the Seller, unless rerouting or more expedited handling has been requested by Kendrion (Mishawaka) in writing. Time is of the essence of this contract, and if delivery of items or rendering of services is not completed by the time promised, Kendrion (Mishawaka) reserves the right without liability, and in addition to its other rights and remedies, to terminate this contract by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred. Kendrion (Mishawaka) further reserves its right, at its sole discretion and in addition to its other rights and remedies, to require the specific performance of Seller's obligations pursuant to the PO.

**Advance Manufacture & Shipment.** Seller shall not manufacture in advance of Seller's normal flow time or deliver any Goods in advance of the schedule set forth in the PO without Kendrion (Mishawaka)'s written permission. Kendrion (Mishawaka) reserves the right to return, shipping charges collect, all material received at its place of business, or other specified destination, in advance of the PO's schedule. Seller may request, at the time Seller returns its acknowledgment of the PO, Kendrion (Mishawaka)'s written consent to advance manufacture and/or delivery; however, shipments will be made in accordance with Kendrion (Mishawaka)'s shipping schedule unless it gives such written consent otherwise.

**Inspection & Testing.** All Goods will be subject to final inspection, testing, and approval at destination by Kendrion (Mishawaka). Payment for the Goods delivered shall not constitute acceptance. Kendrion (Mishawaka) shall have the right to hold, inspect, test, and reject any or all Goods that, in Kendrion (Mishawaka)'s judgment, are defective or nonconforming, and reserves the right to hold, inspect, test, and reject such Goods within a commercially reasonable time, as determined by its own inventory, manufacturing, and sales requirements. Goods that must be installed, tested, or assembled before commercial use shall not be deemed accepted until such installation, testing, or assembly indicates that the Goods are within specifications and operating properly. Upon notice, Kendrion (Mishawaka) may make inspection visits at the site where the Goods are being designed or manufactured, or services being performed. Upon request, Seller shall provide Kendrion (Mishawaka) with written performance and status reports. Any inspection, testing, or reports shall not relieve Seller of its warranty or other obligations under this Agreement.

**Rejects.** In its discretion, Kendrion (Mishawaka) reserves the right to reject and hold all defective or nonconforming Goods at Seller's risk and expense, and subject to Seller's prompt advice as to disposal, or to return any such Goods freight collect. Kendrion (Mishawaka) may charge Seller all storage and handling expenses, including without limitation unpacking, examining, repacking, storing, and shipping such Goods. No Goods returned as defective or nonconforming shall be replaced without an order. If any merchandise fabricated by Seller is rejected by Kendrion (Mishawaka) due to Seller's fault or failure to meet the requirements, drawings, specifications, and/or samples under the terms of the PO, Seller shall at Kendrion (Mishawaka)'s option either replace such merchandise at Seller's own expense or pay Kendrion (Mishawaka) the replacement cost of the material used therein. Kendrion (Mishawaka)'s acceptance of any nonconforming lot shall not waive its rights to damages arising from such nonconformity, nor serve to modify Seller's obligations hereunder, nor waive

Kendrion (Mishawaka)'s right to require conformity as to the remainder. Seller's obligations and Kendrion (Mishawaka)'s rights under this paragraph shall be in addition to any other obligations of Seller, and rights or remedies that Kendrion (Mishawaka) has in law or equity.

**Payment.** Unless otherwise specified by the PO, terms of payment shall be net 60 days after the later of delivery of Goods, receipt of a certificate of work completion, or receipt of invoice, less any applicable discount, retention, or setoffs. Payment of the PO shall be subject to deduction or setoff for any valid claim against Seller arising from this or any other transaction. All claims for money due or to become due from Kendrion (Mishawaka) shall be subject to deduction or setoff by the Kendrion (Mishawaka) by reason of any counterclaim arising out of this or any other transaction with Seller. Such deduction or setoff shall be in addition to any other rights or remedies available to Kendrion (Mishawaka) at law or equity. If the PO permits progress payments, Seller shall certify in writing the performance of the applicable payment milestones and grants Kendrion (Mishawaka) a security interest in the work or Goods to the extent of such payments. Payment for Goods under the PO shall not constitute an acceptance thereof, but all shall be received subject to Kendrion (Mishawaka)'s inspection and rejection. In the event Goods have not been received, Kendrion (Mishawaka) reserves the right to withhold payment until such Goods have been received and checked. Seller's sole remedy for late payment is to charge interest at a rate not exceeding .10% (one tenth of one percent) per month from the date of late payment.

**Warranty.** Seller expressly warrants that all Goods furnished by Seller pursuant to the PO shall: (a) strictly conform to all specifications, statements of work, drawings, samples, and descriptions given, (b) be new, merchantable, and free from defects in design, material, workmanship, warning, and instruction, (c) conform to any statements made on the containers or labels or advertisements for such Goods, and be adequately contained, packaged, marked, and labeled, (d) be free from all liens, encumbrances, and security interests, (e) be fit and safe for their typically intended and particular purpose, and (f) satisfy all relevant governmental and industry standards. This warranty shall apply for a reasonable period of time not less than five (5) years from date of delivery to Kendrion (Mishawaka)'s facility. Seller further warrants that it has good and marketable title to the Goods at the time of sale, and that its Goods shall have a usable life of no less than ten (10) years. Without limiting this warranty, Seller also represents and warrants that it shall obtain, assign, and otherwise provide Kendrion (Mishawaka) the benefits of warranties and guarantees given by manufacturers or suppliers of material, products, or other items incorporated into Seller's Goods, and shall perform its duties so that such warranties or guarantees remain in full effect. Inspection, tests, and acceptance or use of the Goods furnished hereunder shall not affect Seller's obligations under this warranty, and such warranty shall survive such inspection, tests, acceptance, and use. Seller's warranty shall run to Kendrion (Mishawaka), and Kendrion (Mishawaka)'s successors, assigns, customers, and to all users of the products sold by Kendrion (Mishawaka).

**Remedies.** In addition to Kendrion (Mishawaka)'s other remedies under this Agreement, Seller agrees to promptly and expeditiously correct or replace defective or nonconforming Goods, at Kendrion (Mishawaka)'s option and without expense to Kendrion (Mishawaka), time being of the essence, provided that Kendrion (Mishawaka) elects to give Seller this opportunity. Such election shall not in any manner waive, limit, or modify any other rights or remedies that Kendrion (Mishawaka) or its successors, assigns, customers, and/or product users may have against Seller at law or equity. All warranty work shall be warranted under this Agreement for an additional five (5) years from the completion of repairs or replacement. If Seller fails to correct or replace the defective or nonconforming Goods promptly, Kendrion (Mishawaka), after reasonable notice to Seller or without notice in the event Kendrion (Mishawaka)'s production requirements require immediate repairs or replacement, may arrange for such corrections or replacement and charge Seller for the costs incurred by Kendrion (Mishawaka) in doing so. In any event, Seller shall reimburse Kendrion (Mishawaka) all direct, consequential, incidental, or special damages incurred, including without limitation lost profits, delay costs, loss of use, and other damages, because of the defective/nonconforming Goods, or for any breach of this Agreement. Kendrion (Mishawaka) retains the right to withhold any payments due Seller until Seller cures any breach of default under this Agreement. Seller shall reimburse Kendrion (Mishawaka) its reasonable attorney and paralegal fees and all costs or expenses incurred to enforce or defend its rights under this Agreement. To the extent specified herein, Seller's remedy is exclusive of all other remedies.

**Indemnification.** Seller, at its expense and at Kendrion (Mishawaka)'s option, shall defend, indemnify, and hold harmless Kendrion (Mishawaka) (and its directors, officers, employees, members, successors, and assigns) against all damages, claims, causes of action, suits, proceedings, liabilities, losses, and expenses (including without limitation reasonable attorney and paralegal fees) arising out of or resulting in any way, directly or indirectly, from any alleged or actual (a) defect or nonconformity in the Goods purchased hereunder, including without limitation defects in design, material, manufacture, workmanship, labeling, instructions, warnings, (b) breach or performance of the PO by Seller or its agents, employees, or subcontractors, or any act or omission thereunder, (c) failure of Seller to comply with safety inspections or other requirements imposed by law, governmental agencies, or industry standards, (d) property damage or personal injury caused during the performance of services, delivery or installation of Goods, or other conduct of Seller or its subcontractors on premises owned, leased, occupied or under the control of Kendrion (Mishawaka) or its customer, (e) patent, trademark or copyright infringement or unfair competition arising out of the sale, marketing, packaging, or advertising of Goods sold by Seller, or (f) liens, security interests, and/or encumbrances whatsoever asserted against such Goods, including claims to such Goods. Kendrion (Mishawaka) shall retain the option of retaining its own counsel without limiting in any way Seller's obligation to cover the expense of a defense and indemnity, and Kendrion (Mishawaka) shall retain the right to participate in the defense and resolution of any claim, suit, or proceeding. The defense and indemnity obligations shall be in addition to the warranty obligations of Seller or other remedies of Kendrion (Mishawaka).

**Insurance.** All materials, tooling, models, patterns, drawings and other personal property belonging to Kendrion (Mishawaka) and furnished by Kendrion (Mishawaka) to Seller or otherwise in Seller's custody or possession shall be at Seller's risk from loss or damage from all hazards. Seller and any subcontractor shall procure and maintain (a) general liability insurance (including for products) in an amount no less than \$5 million per occurrence, (b) public liability and property damage insurance in reasonable and sufficient amounts to cover the indemnity and other obligations under this Agreement, and (c) workmen's compensation insurance in accordance with state law and covering all employees engaged in the performance of Seller's obligations hereunder.

Insurance shall be primary, and shall pay in full before any other insurance available to Kendrion (Mishawaka). Seller shall obtain waivers of subrogation for the benefit of Kendrion (Mishawaka). Seller shall name Kendrion (Mishawaka) as an additional insured under all insurance policies. Insurers shall be financially sound and acceptable to Kendrion (Mishawaka).

**Subcontracting & Assignment.** Seller may not assign the PO, including any rights or obligations thereunder, or subcontract or delegate any part of the PO, without the prior written consent of Kendrion (Mishawaka). Any subcontractor must be listed and clearly identified on the PO. In the event of approval, all subcontractors shall be bound by this Agreement, and Seller shall procure confirmation of such agreement in writing. Seller shall nonetheless remain liable for all acts and omissions of any subcontractor as though performed or omitted by Seller.

**Patent, Copyright, & Lien Protection.** To the extent that Goods are not manufactured pursuant to the designs originated solely by Kendrion (Mishawaka), Seller guarantees that the sale and/or use of all Goods will not infringe any United States or foreign patents, trademarks, copyrights or other intellectual property rights of any person or entity. All copyrightable or patentable Goods prepared for Kendrion (Mishawaka) or arising out of anything done pursuant to the PO shall constitute works made for hire. Seller agrees that this PO constitutes an assignment of such rights to Kendrion (Mishawaka) and covenants that it shall take all actions necessary to obtain and fully transfer such rights to Kendrion (Mishawaka) without additional cost to Kendrion (Mishawaka).

**Termination by Kendrion (Mishawaka).** Kendrion (Mishawaka) reserves the right to terminate the PO or any part hereof for its sole convenience at any time. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease work. Subject to any terms on the face of the PO, Seller shall be paid a reasonable termination charge consisting of a percentage of the PO price reflecting the percentage of the work performed before the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by Seller's suppliers or subcontractors that Seller could reasonably have avoided. Seller shall not unreasonably anticipate the requirements of the PO. In the event of this type of termination, Seller must submit any claim for the pro rata and direct costs of Goods produced or work performed in writing within thirty (30) days to Kendrion (Mishawaka), and in sufficient detail to permit consideration by Kendrion (Mishawaka) of an appropriate payment. Kendrion (Mishawaka) may also rescind or terminate the PO or any part thereof for cause in the event of (a) any default by the Seller, (b) a failure to comply with any of the terms and conditions of the PO, or (c) a failure by Seller to meet progress milestones, or a cessation or suspension of Seller's business operations. Late deliveries, deliveries of defective or nonconforming products, and the failure to provide Kendrion (Mishawaka), upon request, with adequate assurances of future performance shall also be among the causes that allow Kendrion (Mishawaka) to terminate the PO for cause. In the event of termination for cause, Kendrion (Mishawaka) shall not be liable to Seller for any amount, and Seller shall be liable to Kendrion (Mishawaka) for any and all damages sustained by reason of the default that gave rise to the termination. If it should be determined that Kendrion (Mishawaka) has improperly terminated this contract for cause, such termination shall be deemed a termination for convenience. In the event of any termination, Seller shall protect Kendrion (Mishawaka)'s property and Goods in Seller's custody or control until final transfer to Kendrion (Mishawaka). At Kendrion (Mishawaka)'s sole option, Seller shall deliver to Kendrion (Mishawaka) or dispose of any partially completed Goods or obsolete materials. Kendrion (Mishawaka)'s right to terminate shall be in addition to any other rights or remedies at law or equity.

**Cancellation for Insolvency or Proceedings.** In the event of the institution of any proceedings by Seller against Kendrion (Mishawaka), or in the event of the institution of any proceedings against Seller, voluntary or involuntary, in bankruptcy or insolvency, or under any provisions of the United States Bankruptcy Code, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of Seller, Kendrion (Mishawaka) shall be entitled to cancel this contract forthwith, without liability for loss of anticipated profits or otherwise.

**Intellectual Property & Confidentiality.** Seller acknowledges Kendrion (Mishawaka)'s ownership of all of its trademarks, service marks, copyrights, imprints, rights of publicity, patents, design patents, registered designs, industrial designs, trade dress, product design, trade secrets and other intangible rights ("Kendrion (Mishawaka) Intellectual Property") and agrees that Seller shall have no right, title or interest whatsoever in any Kendrion (Mishawaka) Intellectual Property. Unless modified by a specific written agreement signed by Kendrion (Mishawaka) and Seller, all information furnished by Kendrion (Mishawaka) (or another person acting on behalf of Kendrion (Mishawaka)) and all information learned or observed about Kendrion (Mishawaka) or its operations through performance of any PO shall be confidential. The PO, together with all drawings, specifications and samples included therewith or referenced thereby, shall be maintained in confidence by Seller. No such confidential information shall be disclosed except to those Seller employees with need to know. Seller shall promptly return all confidential information to Kendrion (Mishawaka) upon request. Seller shall not publicize the fact that Kendrion (Mishawaka) has contracted to purchase Goods from Seller, nor shall information concerning the PO be disclosed by Seller to or used for the benefit of any other party. No product first manufactured by Seller for Kendrion (Mishawaka) pursuant to the PO shall be sold by Seller to any other party without written permission in advance from Kendrion (Mishawaka). Unless otherwise agreed in writing, no information disclosed by Seller to Kendrion (Mishawaka) shall be deemed confidential, and Seller shall have no rights against Kendrion (Mishawaka) with respect to its use thereof.

**Tooling & Materials.** Title to and the right of immediate possession of all tooling, jigs, dies, molds, designs, patterns, drawings, plates, negatives, and other materials furnished by Kendrion (Mishawaka) to Seller (together "Tooling") shall be and remain in Kendrion (Mishawaka), in all stages of construction. When the cost of Tooling involved in the manufacture or production of Goods covered by the PO are included in the price per unit, then such items become the property of Kendrion (Mishawaka) upon completion of the PO. Any Tooling otherwise paid for by Kendrion (Mishawaka) shall forthwith become Kendrion (Mishawaka)'s property. Seller shall insure Tooling at replacement value. Seller shall keep accurate written records of all Tooling and will provide such records to Kendrion (Mishawaka) upon request. To the extent not already done, all Tooling shall be marked or labeled by Seller to indicate Kendrion (Mishawaka) is the sole owner of such property.

**Force Majeure.** Kendrion (Mishawaka) may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such Goods at the direction of the Kendrion (Mishawaka) and shall deliver them when the cause affecting the delay has been removed. Kendrion (Mishawaka) shall be responsible only for Seller's direct additional costs in holding the Goods or delaying performance of this Agreement at Kendrion (Mishawaka)'s request. Seller shall also be excused if delivery is delayed

by the occurrence of unforeseen and unforeseeable events that are beyond Seller's control, provided Seller notifies Kendrion (Mishawaka) of such events as soon as they occur and gives Kendrion (Mishawaka) its best estimate of revised delivery dates. However, Kendrion (Mishawaka) reserves the right to reject Seller's revised delivery dates and to cancel the PO without any liability. If Seller's production is only partially restricted or delayed, it shall use its best efforts to accommodate the requirements of Kendrion (Mishawaka), including giving the PO preference and priority over those of other customers that were placed after the PO. In any event, Seller shall maintain a contingency plan to avoid any delay in the delivery of Goods under the PO associated with events beyond Seller's reasonable control.

**Changes.** Kendrion (Mishawaka) shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, quantities, method of transportation, and other terms of the PO, which shall be immediately implemented by Seller. If any such changes cause an increase or decrease in the cost, or the time required for performance, an equitable adjustment shall be made and the PO shall be modified in writing accordingly.

**Waiver.** Kendrion (Mishawaka)'s failure to insist on performance of any term or condition or to exercise any right or Kendrion (Mishawaka)'s waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type. No waiver by Kendrion (Mishawaka) of any breach of the Agreement by Customer shall be effective unless in writing nor operate as a novation or waiver of any other breach. Kendrion (Mishawaka) shall not lose any right because it has not exercised that right in the past.

**Integration & Severability.** The PO and any written documents that may be attached thereto and/or incorporated by specific reference constitute the entire agreement between the parties and supersede all previous communications between them, either oral or written. All such previous communications are hereby abrogated and withdrawn. No stipulations, representations or agreements by Kendrion (Mishawaka) or any of its officers, agents, or employees shall be binding upon Kendrion (Mishawaka) unless reduced to writing, and attached to and incorporated in the PO, and no local, general or trade custom shall alter or vary the terms hereof. Whenever possible, all terms and conditions of the PO shall be interpreted so as to be valid under applicable law. If any provision hereof is determined invalid under applicable law, such invalidity shall be limited to such provision without invalidating the remainder of the PO or any other terms or conditions hereof; and, if any provision of the PO or this Agreement is found to be ambiguous or in conflict with any other provision hereof, such ambiguity or conflict shall be resolved in the manner that provides the greatest protection, benefit, and limitations of liability to Kendrion (Mishawaka).

**Limitation on Kendrion (Mishawaka)'s Liability.** In no event shall Kendrion (Mishawaka) be liable for anticipated profits or for incidental or consequential damages. Kendrion (Mishawaka)'s liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from the PO or from the performance or breach thereof shall in no case exceed the price allocable to the Goods or unit thereof that gives rise to the claim, less material, labor, and production cost savings of Seller. Kendrion (Mishawaka) shall not be liable for penalties of any description.

**Period of Limitations.** No claim, suit, or other proceeding arising out of or related to the Goods or this Agreement may be brought by Seller after one (1) year from the date it accrues. No discovery, estoppel, or other rule shall apply to extend this limitations period.

**Choice of Law & Forum.** This Agreement shall be considered to have been made in the State of Indiana and shall be governed by and interpreted according to Indiana law, without giving effect to conflict of law principles. Except as provided below, any action, question, dispute, or claim arising out of or relating to the Agreement may be brought only in a federal or state court in South Bend, Indiana, having jurisdiction over the subject matter, and Seller irrevocably consents that such court shall have personal jurisdiction over Seller and waives any objection that the court is an inconvenient forum. Alternatively, and at Kendrion (Mishawaka)'s sole election, any dispute arising out of or relating to this Agreement shall be submitted to binding arbitration in South Bend, Indiana in accordance with the rules of the American Arbitration Association. Any award ordered in such arbitration shall be enforceable in any court of competent jurisdiction. In the event any suit is brought against Kendrion (Mishawaka) by Seller in violation of this Agreement or for claims inappropriate under the Agreement, Seller agrees to pay Kendrion (Mishawaka)'s attorney and paralegal fees as well as costs to defend such suit.