

KRAFT FLUID SYSTEMS, INC. STANDARD TERMS AND CONDITIONS OF SALE

CONTRACT AND ACCEPTANCE: GOODS AND SERVICES PURCHASED FROM KRAFT FLUID SYSTEMS, INC. OR ITS SUBSIDIARIES (“KRAFT”) ARE EXPRESSLY SUBJECT TO THE TERMS AND CONDITIONS HEREIN. THESE TERMS AND CONDITIONS, TOGETHER WITH THOSE CONTAINED IN ANY QUOTATION, ORDER ACKNOWLEDGEMENT, OR PACKING LIST FROM KRAFT, CONSTITUTE THE ENTIRE AGREEMENT (“AGREEMENT”) BETWEEN THE CUSTOMER (“BUYER”) AND KRAFT. MODIFICATIONS OR ADDITIONAL TERMS FROM BUYER WILL BE RECOGNIZED ONLY IF AGREED TO AND CLEARLY ACCEPTED IN WRITING BY A CORPORATE OFFICER OF KRAFT. BY PLACING AN ORDER WITH KRAFT AND UPON KRAFT’S ACKNOWLEDGMENT AND ACCEPTANCE OF ORDER, BUYER WILL BE DEEMED TO HAVE ACCEPTED AND AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS. KRAFT RESERVES THE RIGHT TO ACCEPT OR REJECT ANY ORDER RECEIVED. DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS REFERENCED OR INCLUDED IN, AMONG OTHER THINGS, a) TERMS AND CONDITIONS APPEARING ON OR REFERENCED IN CUSTOMER’S PURCHASE ORDER, OR SIMILAR COMMUNICATIONS, OTHER THAN THE SPECIFICS OF THE TRANSACTION (E.G. PART NUMBER, QUANTITY) THAT COINCIDE WITH THE KRAFT SALES RECORD, b) BUYER’S TERMS AND CONDITIONS OF PURCHASE, c) BUYER’S QUALITY POLICY AND OTHER SUPPLIER POLICIES, AND d) ANY TERMS POSTED ON THE BUYER’S WEBSITE OR SUPPLIER E-COMMERCE SITE EVEN THOUGH IT MAY BE NECESSARY FOR KRAFT TO CLICK AN “ACCEPT” OR “AGREE” BUTTON ON AN ELECTRONIC SITE AS A MEANS OF ACCESSING INFORMATION ABOUT CURRENT OR PROSPECTIVE ORDERS OR SUPPLIER PROGRAMS, ARE EXPRESSLY OBJECTED TO AND REJECTED AND SHALL NOT BE BINDING UPON KRAFT.

PRICES: Prices in effect at time of shipment will apply unless otherwise agreed to in writing by KRAFT. Prices are subject to increase based on manufacturer/supplier price increases and surcharges. KRAFT may impose additional charges, at its discretion, for supplying Certificates of Origin, consular invoices or similar documents, non-standard packaging, or for storing product not shipped as BUYER has previously agreed. Inbound freight charges may apply to some purchases.

TAXES and DUTY: KRAFT’S prices exclude, and BUYER is responsible for, any applicable duty, inspection fees, sales, value-added, goods and services, use, excise or similar taxes, unless specifically mentioned in the quotation.

PAYMENT TERMS: Unless explicitly agreed to by KRAFT elsewhere in writing, standard terms are net cash thirty (30) days from date of invoice. Any portion of the invoice amount that has not been paid within thirty (30) days of the invoice date will accrue a service charge at the lower of 2% per month or the highest rate permitted by law, commencing thirty-one (31) days after the invoice date. BUYER agrees to pay KRAFT reasonable attorney’s fees and cost incurred in connection with enforcing any of these conditions or recovering payment of the amount of any invoice. If the financial condition or credit of BUYER at any time shall, in the judgment and discretion of KRAFT, not warrant shipment of goods ordered, KRAFT may, at its option, require full payment prior to shipment or refuse to ship and terminate any order outstanding without liability to BUYER.

DELIVERY, TITLE AND RISK OF LOSS: All delivery dates stated by KRAFT are approximate dates only and estimated in good faith to the best of KRAFT’S knowledge. Shipments may be in installments or single lot. Time shall not be deemed to be of the essence in making delivery under BUYER’S order unless specifically agreed to in writing and signed by an authorized representative of KRAFT. No liability shall result from delay in performance or from non-performance of the Agreement. Unless otherwise agreed by Kraft in a writing signed by an authorized representative of Kraft, terms of delivery shall be F.O.B. shipping point for domestic shipments and Ex Works [INCOTERMS] for export shipments. Unless otherwise specified in a writing signed by an authorized representative of Kraft, TITLE and RISK of LOSS to Products shall pass to BUYER at the time and place of shipment; provided however, KRAFT retains a security interest and right of possession in the Products until BUYER makes payment in full. BUYER assumes all risk of damage to or loss or destruction of Product in transit, and no loss, injury or destruction thereof shall release BUYER from its obligation to pay for that shipment. Unless otherwise agreed to in writing, truck shipments will be made collect.

CANCELLATION: Once accepted by KRAFT, this order is not subject to cancellation by BUYER without the express written consent of KRAFT. Any such cancellation shall be subject to a cancellation charge, not as a penalty, but as the reasonable estimate of the damages which KRAFT and the vendors of KRAFT will suffer on account of the default of BUYER.

RETURNS: New, unused standard stock material will be subject to return for credit, only with the prior written authorization of KRAFT, transportation charges prepaid, and is subject to a \$25 minimum handling charge and a minimum 15% restocking charge. Non-standard or used material shall not be subject to return or credit. Errors in order processing or shipment must be reported within fifteen (15) days after shipment for replacement.

REPAIRS: Written authorization is required for repair, returns, and transportation charges prepaid. All repairs are subject to a minimum inspection charge.

WARRANTY: As a distributor of products and components manufactured by others, KRAFT extends to BUYER any and all assignable warranties from the manufacturer of the product. Manufacturers of products and components sold by KRAFT generally warrant items to be free of defects in materials and workmanship for a minimum of one (1) year (depending on manufacturer) after date of shipment by manufacturer and will repair or replace defective items at their option at the original shipping point. Upon authorization from KRAFT, defective products and components will be returned, transportation charges prepaid, to a location directed by KRAFT. KRAFT makes no other warranties beyond those extended by the respective product and component manufacturers and Kraft will not be liable for any damages or remedies beyond those which are the responsibility of the manufacturer under its warranty policy.

Equipment, products or components customized or built by KRAFT will be warranted to be free of defects in materials and workmanship for a period of one (1) year from the date of shipment from KRAFT'S facility. Products and components determined to be defective by KRAFT will be repaired or replaced by Kraft, at its option at the original point of delivery. Upon authorization from Kraft, defective products or components will be returned to Kraft, freight prepaid, to Kraft's designated facility.

The foregoing shall constitute KRAFT'S sole obligation and BUYER'S sole remedy for breach of the foregoing warranty.

THE FOREGOING WARRANTIES PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

WARRANTY EXCLUSIONS: The above warranties do not cover and KRAFT will have no responsibility for any failure to meet any warranty caused by any failure of BUYER or its agents to store, install, operate, inspect or maintain the goods covered by these Terms and Conditions in accordance with the recommendations of the OEM or its agent manufacturer or in the absence of such recommendations, in accordance with the generally accepted practices of the industry, including, but not limited to, applicable quality assurance procedures relating to the installation of the items covered by these Terms and Conditions or resulting from any defect in any casting, forging part or assembly delivered to KRAFT by BUYER that did not occur as a result of any work performed by KRAFT. BUYER agrees to indemnify and hold harmless KRAFT and its affiliates, officers, employees, and agents from any and all such liability. No warranty is offered by KRAFT on prototypes or goods that are developmental. This warranty shall not apply to any goods that have been subject to accident, misuse or unauthorized alteration.

LIMITATION OF LIABILITY: KRAFT'S liability on any claim for loss or damage arising out of the sale of goods or provision of any services supplied hereunder, or the sale, resale, operation or use of products, whether based on contract, warranty, tort (including negligence) or other grounds, shall not exceed the price allocable to such products or services or the portion thereof involved in the claim, REGARDLESS OF CAUSE OR FAULT. This limitation of liability reflects a deliberate and bargained-for allocation of risks between KRAFT and BUYER and constitutes the basis of the parties' bargain, without which KRAFT would not have agreed to the price or terms of this Agreement. KRAFT shall not under any circumstances, be liable for any labor charges without its prior written consent. KRAFT SHALL NOT IN ANY EVENT BE LIABLE, whether as a result of breach of contract, warranty, tort (including negligence) or based on any other grounds or theory of liability, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES including, but not limited to, loss of profits or revenue, loss of use of materials or associated products, cost of capital, cost of substitute products, facilities or services, downtime costs, loss of goodwill or business reputation, or claims of customers of BUYER for such damage. If KRAFT furnishes BUYER with recommendations, advice or other assistance regarding any products, components or the use thereof, or any system or equipment in which any such Products may be installed, the furnishing of the advice or assistance will not subject KRAFT to any liability, whether based on contract, warranty, tort (including negligence) or other grounds or theory of liability.

APPLICABLE LAW: These Terms and Conditions shall be governed in all respects by the laws of the State of Ohio, United States of America.

WAIVERS: The waiver by KRAFT of any breach by BUYER of any provision of these Terms and Conditions shall not be deemed a waiver of future compliance therewith or with any other provision hereof, and such provision, as well as all other provisions hereof, shall remain in full force and effect. No course of conduct, nor any delay by KRAFT hereunder, nor the acceptance of payment by KRAFT with knowledge of default or breach, shall waive any rights of KRAFT or modify these Terms and Conditions.

ERRORS: KRAFT reserves the right to correct clerical or typographic errors or omissions.

NUCLEAR OR OTHER HAZARDOUS ACTIVITIES: Unless specifically agreed to in writing by an authorized officer of KRAFT, products and components sold hereunder are not intended for use in connection with any nuclear facility or any other application or hazardous activity where failure of a single component could cause substantial harm to persons or property. If so used, KRAFT disclaims any and all liability for any nuclear damage, contamination or other damage or injury and BUYER shall indemnify and hold KRAFT harmless from such liability whether as a result of breach of contract warranty, tort (including negligence) or other grounds. KRAFT and its suppliers shall not be liable to BUYER or its insurers based on contract, warranty, tort (including negligence), or other grounds for onsite damage to property located at a nuclear facility.

FORCE MAJEURE: KRAFT shall not be liable for monetary damages or otherwise for any delay or failure to perform any of its obligations, for the time and to the extent that such failure to perform is caused by: (a) war, explosion, fire, flood, accident, severe weather or act of God; (b) strikes, lockouts or other labor troubles; (c) compliance with any governmental regulation, order or rule (foreign or domestic); (d) shortage or break down or other failure of facilities used for the manufacture or transportation of the products sold hereunder; (e) shortage or unavailability of labor, power, fuel, raw materials or other products necessary for the delivery of the goods sold hereunder; or (f) any other cause or causes beyond the reasonable control of KRAFT or its suppliers. In the event KRAFT is unable, due to any such cause or otherwise, to fulfill BUYER'S total requirements, BUYER agrees to accept, as full and complete performance by KRAFT, delivery of product in accordance with such allocations as KRAFT may make. During periods when demand for available product exceeds supply, KRAFT may distribute its supply of raw materials and/or finished goods among itself, for its own uses, its other customers and BUYER in such manner as KRAFT deems practicable. BUYER agrees to accept, as full and complete performance by KRAFT, deliveries in accordance with such determination as KRAFT may make. In no event shall KRAFT be required to purchase material or product from third parties in the event that KRAFT invokes one of the above-mentioned clauses, nor will KRAFT be liable for any cost increases suffered by BUYER in purchasing product from a third party.

EQUAL OPPORTUNITY AND LABOR PRACTICES: The contract provisions in Section 202 of Executive Order 11246, as amended, and the regulations promulgated thereunder are incorporated by reference as if fully written with respect to any order. KRAFT certifies that the Materials covered by this invoice have been produced in accordance with the Fair Labor Standards Act of 1938, as amended.

ADDITIONAL TERMS AND CONDITIONS RELATED TO EXPORT OF PRODUCTS AND SERVICES PURCHASED FROM KRAFT – IN ADDITION TO THE STANDARD TERMS AND CONDITIONS SET FORTH ABOVE, THE EXPORT OF ANY GOODS, SERVICES, INFORMATION, OR TECHNOLOGY PROVIDED BY KRAFT WILL BE GOVERNED BY THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS (“ADDITIONAL TERMS”) AND MAY BE SUBJECT TO EUROPEAN UNION AND OTHER APPLICABLE COUNTRIES’ EXPORT AND IMPORT LAWS AND REGULATIONS. IN THE EVENT OF A CONFLICT BETWEEN KRAFT’S STANDARD TERMS AND CONDITIONS AND THE ADDITIONAL TERMS, THE ADDITIONAL TERMS SHALL PREVAIL FOR EXPORT SALES OF KRAFT’S PRODUCTS. BUYER AGREES TO INDEMNIFY AND HOLD KRAFT HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND ORDERS, OR ANY PROVISIONS OF THE ADDITIONAL TERMS HEREOF.

ORDER ACCEPTANCE: BUYER acknowledges that no order shall be deemed accepted unless and until it is verified and accepted by KRAFT, or any of its subsidiaries, at KRAFT’S U.S. facility [or at any of its websites]. BUYER further consents that submission of its order shall subject BUYER to the jurisdiction of the federal courts of the United States of America and of the State where acceptance occurred in the United States of America.

EXPORT CONTROLS AND RELATED REGULATIONS: BUYER represents and warrants that it is not on, or associated with any organization on the United States Department of Commerce’s Bureau of Industry and Security’s Denied Persons List or Unverified List; or the United States Department of the Treasury’s Office of Foreign Assets Control’s lists or Specially Designated Nationals, Specially Designated Global Terrorists, Specially Designated Narcotics Traffickers, Specially Designated Narcotic Traffickers-Kingpin, or Specially Designated Terrorists List; or the United States Department of State’s list of Designated Foreign Terrorist Organizations, Embargoed Countries list, or Debarred Persons List; or is subject to a denial order issued by the United States Department of Commerce. BUYER shall comply with all applicable export laws and regulations including, without limitation, those administered by the U.S. Department of Commerce - Bureau of Industry and Security (U.S. Export Administration Regulations 15 CFR 730 et seq.) and shall not export, re-export, resell, transfer, or disclose, directly or indirectly, any Products or technical data, or the direct product of any Products or technical data, to any proscribed person, entity, or country, or foreign national thereof, unless properly authorized by the U.S. government and/or any other applicable or relevant government or regulatory body or agencies and their successors.

FOREIGN PRINCIPAL PARTY IN INTEREST; FREIGHT FORWARDER AND DOCUMENTATION: Except for direct shipments from KRAFT’S facility to its Customers in Canada, it is specifically agreed that BUYER shall be the foreign principal party in interest and/or that its freight forwarder shall act as BUYER’S agent in such capacity for Export Administration Act or other applicable purposes; and BUYER and freight forwarder shall assume responsibility for all export or routed transactions documentation. At KRAFT’S request, BUYER or its freight forwarder shall provide copies of any export, shipping, or import documentation prepared by BUYER or its freight forwarder related to sales to them by KRAFT. BUYER further acknowledges that KRAFT will not be designated as Exporter of Record on any Shipper’s Export Declaration, Country of Origin Certificate or export, import, transportation or foreign trade documents related to any products or components sold in domestic sales transactions which are subsequently trans-shipped to non-U.S. locations.

U.S. FOREIGN CORRUPT PRACTICES ACT: BUYER states that it is an independent contractor, and represents, warrants, and covenants that it has not paid, offered or agreed to pay, authorized the giving of, or caused to be paid, directly or indirectly, money or anything of value to any foreign official (as defined in the U.S. Foreign Corrupt Practices Act, as amended), in connection with the purchase and resale of any products ordered from KRAFT.

COUNTRY OF IMPORTATION AND ANTI-DIVERSION: BUYER represents that it is purchasing Products from the U.S. and importing them to the country specified in the BUYER’S and KRAFT’S documentation. BUYER agrees that products will be shipped to the specified destination in compliance with the laws of such destination and the U.S., and that the products will not be directly or indirectly sold, trans-shipped, exported, re-exported, transferred, assigned, used, or otherwise disposed of in a manner which may result in any non-compliance with applicable U.S. laws and regulations relating to the products purchased by BUYER. Any products, components, technology and software will be exported from the U.S. in accordance with the U.S. Export Administration Regulations and other applicable laws or regulations. Diversion or end use contrary to U.S. law is prohibited. If requested by KRAFT, BUYER shall provide documentation satisfactory to KRAFT verifying delivery at the designated country. BUYER further agrees TO INFORM KRAFT AT THE TIME OF ORDER of any required North American Free Trade Agreement or other applicable documentation, packaging or product marking or labeling, but KRAFT shall not be responsible for providing any such documentation, packaging, marking or labeling other than such documents that are necessary under U.S. export laws and regulations for export. Product Country of Origin information is based on manufacturer-provided information. Our manufacturers do not provide Kraft with the Country of Origin certification of each raw material or subcomponent that is incorporated into the manufacturer’s final product or component.

PERMITS, EXPORT AND IMPORT LICENSES: BUYER shall be responsible for correct export control classification of products, components, technology or software, whether as is or embedded into other equipment. BUYER further agrees to comply with applicable export, re-export or end-use restrictions, and to obtain any licenses or other official authorizations that may be required by the country of importation and/or under the Export Administration Regulations, International Traffic in Arms Regulations, or other applicable laws or regulations from all applicable jurisdictions.