

# **Kaufman & Robinson Inc.**

## **Sale Terms and Conditions**

### **1. ACCEPTANCE.**

1.1 Unless otherwise provided in Kaufman & Robinson Inc.'s ("Seller's") written quotation, order acknowledgement, invoice or otherwise agreed to in writing by Seller, orders are accepted by Seller subject to these terms and conditions ("Terms"). Any terms proposed in Buyer's acceptance of Seller's offer which add to, vary from, or conflict with the terms herein are hereby objected to. If these Terms have been issued by Seller in response to an offer by Buyer and if any of these Terms are additional to or different from any terms of Buyer's offer, then these Terms shall constitute an acceptance of Buyer's offer subject to the express condition that Buyer accepts such additional and different terms contained in Seller's Terms. If Buyer does not provide its written acceptance to these Terms within ten (10) days after its receipt, then Buyer shall be deemed to have accepted these Terms.

1.2 If Buyer is in the United States: By accepting this contract, Buyer acknowledges and accepts that it will be responsible for export compliance if any of the products on this order are exported from the United States. This includes all export formalities and compliance with United States laws, regulations and sanctions as they may apply to exports of these products.

1.3 If Buyer is not in the United States: By accepting this order, Buyer acknowledges and accepts responsibility for compliance with United States laws, regulations and embargoes that apply to sales and shipments of products on this order to other parties in Buyer's country or to other countries. These United States laws, regulations, and embargoes include those that apply to re-exports and transfers, sales or shipments to parties and countries subject to United States embargoes, and sales or shipments to parties subject to Denial Orders. If Buyer plans to make a sale or shipment to a party on the United States Entity List, it shall obtain an approved United States export license before the sale or shipment may take place. If Buyer believes that Seller's products may be illegally diverted to an embargoed country or party, it shall immediately stop the shipment and notify Seller of the transaction.

### **2. SHIPMENT AND TITLE.**

2.1 All shipping dates provided are estimates only. Seller shall attempt to comply with, but will not guarantee, shipping date(s) set forth on Seller's most recent quotation or order acknowledgement. Default or delay by Seller in shipping or delivering the whole or any part or installment of any products and any included firmware, hereafter referred to as "Product(s)" hereunder shall not affect any other portion thereof. In the event of a default by Buyer, Seller may decline to make further shipments without waiving any of its rights under such order. If, despite such default, Seller elects to continue to make shipment, its action shall not constitute a waiver regarding, or otherwise diminish, Seller's legal remedies with respect to such default or any future default.

2.2 Sales are made FCA factory, Fort Collins, CO, Incoterms 2010. Title to and risk of loss or damage shall pass from Seller to Buyer upon the availability of the Products at Seller's factory, in good condition, packed and available for pickup by Buyer's common carrier. If for any reason Buyer is not prepared to accept delivery of Products, Seller may store the Products at Buyer's expense and risk in the name of Buyer, and such storage shall constitute shipment and delivery to Buyer.

### **3. PRICES, TAXES AND PAYMENT TERMS.**

3.1 Unless otherwise specified by Seller, prices are for the specific quantity of Products stated and do not include any applicable excise, sales, use and/or similar taxes or charges for transportation, freight, duties, cartage, handling, insurance, special packaging, or marking which will appear as separate charges on the invoice. If prior to shipment Buyer provides an appropriate tax exemption certificate to Seller, Seller will not charge buyer for the applicable taxes.

3.2 Unless otherwise agreed to in Seller's quotation, order acknowledgement or invoice, all invoices are due when issued and must be paid in full prior to Seller releasing any Products for shipping. Subject to credit approval, invoices are due and payable within 30 days from date of invoice at the place set forth on the written quotation, order acknowledgement or the invoice and shall be made in United States Dollars. Where credit is extended, after 30 days a finance charge of one and a half percent (1.5%) per month (eighteen percent (18%) annually), or if lower, the maximum rate permissible by law, will be assessed on any outstanding balance.

3.3 Seller reserves the right to suspend or terminate delivery of any Products if Buyer fails to make payments when due. The amount of any credit extended by Seller to Buyer may be changed, and such credit may be withdrawn by Seller. Any payments received from Buyer may be applied by Seller against any obligation owing by Buyer to Seller, under this or any other contract, regardless of any statement appearing on or referring to such payment, without discharging Buyer's liability for any additional amounts owing by Buyer to Seller. Buyer agrees to pay the entire net amount of each invoice rendered by Seller pursuant to the terms of each such invoice without offset or deduction.

3.4 Buyer grants to Seller an ownership interest in the Products purchased hereunder to secure payment for those Products. If requested by Seller, Buyer agrees to execute appropriate documents provided by Seller to finalize Seller's ownership interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to such documents if necessary to finalize Seller's ownership interest.

3.5 In the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Seller shall be entitled, in addition to any other remedies at law or in equity, to (i) stop or divert any shipment in transit, (ii) cancel any order then outstanding and (iii) receive reimbursement for its cancellation charges.

#### **4. PRODUCT ACCEPTANCE.**

4.1 Unless Buyer notifies Seller in writing within twenty (20) calendar days from the date of shipment of any Products that said Products are rejected, they will be deemed to have been accepted by Buyer. In order for the notice of rejection to be effective, it must also specify the reason(s) why the Products are being rejected.

#### **5. FORCE MAJEURE.**

5.1 Neither party shall be liable for failure to perform occasioned by strikes, lockouts, labor difficulties, riots, inability or difficulty in obtaining or procuring supplies, labor or transportation, fires, storms, floods, earthquakes, explosions, accidents, pandemics, acts of God, interference by civil or military authorities, whether legal or de facto, acts of the public enemy, war, rebellion, insurrection, sabotage, embargoes, orders given priority by any public authority or any other cause beyond the reasonable control of such party (such occurrences "force majeure events"). The party claiming the force majeure event shall promptly notify the other party in writing of its occurrence and shall undertake appropriate remedial measures to mitigate its impact.

#### **6. PATENTS.**

6.1 If a third party brings a meritorious claim that the Products infringe that party's patent or copyright issued by a World Intellectual Property Organization (WIPO) member country, Seller will defend Buyer against that claim and will pay all costs, damages and attorney's fees that a court finally awards, provided that Buyer: (a) promptly notifies Seller in writing of the claim and (b) allows Seller to control, and cooperates with Seller in, the defense and any related settlement negotiations. If such a claim is made or appears likely, Seller, at its option, may obtain a license to enable Buyer to continue to use the Products, may modify the Products or may replace it with one that is functionally equivalent. If Seller determines that none of these alternatives is reasonably available, Buyer agrees to return the Products to Seller upon Seller's written request, in which case Seller will credit Buyer with an amount equal to the price paid for such Products less a reasonable amount for depreciation. Seller's liability is limited to any one of the foregoing.

6.2 Seller shall not be liable for any claim based on (i) anything Buyer provides which is incorporated into the Products, (ii) Buyer's modification of the Products or use thereof is the basis for a claim of infringement, or (iii) the combination, operation or use of the Products with goods provided by other

manufacturers or other goods not provided by Seller. THIS IS THE EXCLUSIVE WARRANTY OF SELLER WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT MATTERS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

## **7. PROPERTY AND OWNERSHIP RIGHTS.**

7.1 Unless otherwise provided in writing, the design, development or manufacture by Seller of the Products for Buyer shall not be deemed to produce a work made for hire and shall not give to Buyer any patent, copyright or any other intellectual property right in the Products, or any portion thereof. All such rights shall remain the property of Seller.

7.2 Unless otherwise agreed in writing, all tooling, fixtures, test equipment, models, patterns, molds, firmware, technology, processes, and proprietary information of Seller, whether or not made for, obtained or developed by Seller for the performance of this contract, shall remain the sole property of Seller; and the payment by Buyer of any costs or expenses relating to any of the foregoing (including non-recurring expenses), shall not be deemed to grant Buyer any ownership interests therein nor shall it in any way limit Seller from making, using or selling Products to third parties made from the foregoing. If Buyer combines any Product from Seller with anything not provided by Seller, and a third party makes a claim against Seller based on such combination, Buyer agrees to indemnify Seller from any claims based upon such combination.

7.3 Firmware provided with the Products remains the property of Seller. The firmware contains embedded software code which is protected by copyright under copyright laws of the United States and other countries. Such embedded software code may not be reproduced, in whole or in part, in any form, or reversed engineered without prior written authorization from Seller.

## **8. ASSIGNMENT.**

8.1 Both parties agree not to assign any rights or delegate any duties under this contract without the other party's prior written consent (which consent such party may grant or withhold in that party's sole and absolute discretion), and that any attempt to do so without such party's prior written consent is void and has no effect. The only assignment permitted is that either party may assign this contract, without consent of the other party, to any entity which survives a merger, consolidation, or change of control in which that party participates or to any entity which acquires all or substantially all of that party's assets.

## **9. WARRANTY.**

9.1 Seller warrants to the Buyer that new Products will be free of defects in material and workmanship and shall conform to applicable specifications for a period of one (1) year from date of shipment, except as otherwise noted in Seller's quotation. Seller does not warrant uninterrupted or error-free operation of the firmware.

9.2 Seller's obligation under these warranties is limited to repairing or replacing, at Seller's option, defective Products. These services will be performed, at Seller's option, at either Seller's facility or Buyer's business location. For repairs performed at Seller's facility, Buyer must contact Seller in advance for authorization to return Products and must follow Seller's shipping instructions. Freight charges and shipments to Seller are Buyer's responsibility. Seller will return the Products to Buyer at Seller's expense. All parts used in making warranty repairs will be new or of equal functional quality.

9.3 Seller assumes no liability under the above warranties and the following are specifically excluded from all warranties including Product defects resulting from (1) abuse, misuse, or mishandling; (2) damage due to forces external to the Product including, but not limited to, Force Majeure, power surges, power failures, defective electrical work, foreign equipment/attachments, or utilities, gas or services; (3) the use of parts not supplied by the Seller; (4) replacement and repaired parts, and consumable items (including, but not limited to, filaments, insulators, grids, reflectors, isolators, vacuum cables, and connectors); (5) improper operation or maintenance, servicing, installation or (6) failure to perform preventive maintenance in accordance with Seller's recommendations (including keeping an accurate log of preventive maintenance). In addition, this warranty does not apply if any Products have been modified without the written permission of Seller or if any Seller serial number has been removed or defaced.

**9.4 THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR OTHERWISE. IN NO EVENT SHALL SELLER'S TOTAL LIABILITY TO BUYER EXCEED THE PURCHASE PRICE OF THE PRODUCT(S) AT ISSUE.**

**10. LIMITATION OF LIABILITY.**

**10.1 SELLER SHALL NOT BE LIABLE FOR NOR SHALL BUYER BE ENTITLED TO CONSEQUENTIAL DAMAGES, FOR ANTICIPATED OR LOST PROFITS, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, LOSS OF TIME, LOSS OF USE, OR OTHER LOSSES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCURRED BY BUYER OR ANY THIRD PARTY IN CONNECTION WITH THE PRODUCTS PROVIDED BY SELLER. IN NO EVENT WILL SELLER'S LIABILITY IN CONNECTION WITH AN ITEM OF PRODUCTS PROVIDED BY SELLER EXCEED THE AMOUNTS PAID TO SELLER BY BUYER FOR SUCH PRODUCTS.**

**11. CHANGES AND TERMINATION.**

**11.1** If Buyer wishes to cancel, reschedule, or change any order for Products after its receipt by Seller, Buyer shall make a written request to Seller. Seller has the right, in its sole discretion, to accept or reject such request and shall notify Buyer of its decision. If Seller accepts such written request, Seller shall invoke the following schedule of charges. All such charges will be either added as a separate line item to the order invoice or invoiced separately by Seller. If any services are included in the order, Buyer shall be invoiced for all services performed by Seller regardless of when Buyer issues its request for cancellation or change.

Any order cancellation, change request, or reschedule request must be in writing. Any order for standard Products may be cancelled without penalty within 10 business days of KRI's receipt of the order; orders for standard Products canceled more than 10 business days after KRI's receipt of the order but more than 10 business days before KRI's scheduled delivery date are subject to a 50% cancellation charge. Notwithstanding the previous sentence, orders for standard Products cancelled within 10 business days of KRI's scheduled delivery date are subject to a 100% cancellation fee. Orders may be rescheduled to ship up to 90 days after the originally scheduled ship date, and are subject to a 15% reschedule charge. Only one reschedule per Order is allowed. Work Orders may not be cancelled after commencement of Services by KRI. Changes to part number or Product configuration are subject to a 15% change fee from the original Product price; new part number pricing will also apply.

**12. COMPLIANCE WITH LAWS.**

**12.1** All quotations by Seller and all purchase orders are subject to compliance with all applicable laws and regulations. Buyer agrees that unless prior authorization is obtained from the U.S. Department of Commerce, neither Buyer nor its subsidiaries shall export, re-export, or release, directly or indirectly, any Products containing any technology, firmware, or firmware source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from Seller, or export, re-export, or release, directly or indirectly, any direct product of such technology, firmware, or firmware source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the Products, technology, firmware, firmware source code, or direct product is prohibited by the EAR. Buyer furnishes the assurances provided herein to Seller in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.

**12.2** Buyer further agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any Products containing any product, technical data, firmware or firmware source code acquired from Seller under this contract or any direct product of such technical data, firmware or firmware source code. Accordingly, Buyer shall not sell, export, re-export, transfer, divert or otherwise dispose of any such Product, technical data, firmware or firmware source code directly or indirectly to any person, firm, entity, country or countries prohibited by US or applicable non-US laws. Further, Buyer shall give notice of the need to comply with such laws and regulations to any person, firm or entity which it has reason to believe is obtaining any such Products containing any product, technical data, firmware or firmware source code from Buyer with the intention of exportation. Each party shall secure, at its own expense, such licenses and export and import documents as are necessary for each respective party to

fulfill its obligations under this contract. If government approvals cannot be obtained, Seller may terminate, cancel or otherwise be excused from performing any obligations it may have under this contract.

12.3 Any product export classification made by Seller shall be for Seller's internal use only and shall not be construed as a representation or warranty regarding the proper export classification for such Product or whether an export license or other documentation is required for the exportation of such Product. The terms of this Paragraph 12 shall survive termination.

### **13. APPLICABLE LAW.**

13.1 The contract created hereby shall be interpreted and construed under the laws of the State of Colorado, without regard to the choice of law provisions thereof and not including the U.N. Convention on Contracts for the International Sale of Goods, if otherwise applicable. Any legal action or proceeding arising out of or relating to these terms and conditions or any order shall be maintained in a court of competent jurisdiction that is located in, or includes in its jurisdictional boundaries, Larimer County, Colorado.

### **14. ATTORNEYS' FEES.**

14.1 The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement.

### **15. GENERAL.**

15.1 This contract contains the entire agreement between the parties and supersedes any prior or contemporaneous oral or written agreements or communications between them relating the subject matter thereof.

15.2 No delay or omission to exercise any right, power or remedy accruing to Seller upon breach or default by Buyer under this contract shall impair any such right, power or remedy of Seller, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

15.3 No amendments to or modifications of the provisions of this contract will be valid and binding upon Seller unless in writing and signed by an authorized representative of Seller.