



GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

Effective Date May 1, 2021
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IMPORTANT: BY PURCHASING PRODUCTS FROM KETTENBACH L.P. YOU ARE AGREEING TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. THIS IS A LEGAL DOCUMENT. YOU ARE AGREEING TO AND/OR WAIVING LEGAL RIGHTS.

IF YOU RECENTLY PURCHASED A PRODUCT FROM KETTENBACH L.P. AND YOU DO NOT AGREE TO THESE GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY, YOU SHOULD RETURN THE PRODUCTS WITHIN THE APPLICABLE RETURN PERIOD AGREED UPON BY KETTENBACH, L.P.

1. SCOPE

The terms and conditions stated herein (hereinafter the “Terms”) apply to all quotations, sales, supplies and services of Kettenbach L.P. (hereinafter “KETTENBACH”) to its customers (hereinafter “Purchaser”). These Terms shall apply to all future contracts and/or agreements regarding the purchase, sale, and/or delivery of goods and/or Products offered by KETTENBACH with the same Purchaser, without the need for KETTENBACH to re-notify Purchaser of these Terms in any case. Any conflicting, deviating, or additional conditions of the Purchaser should not be binding on KETTENBACH, notwithstanding, any failure by KETTENBACH to specifically object to them. Individual agreements with a Purchaser shall prevail over these Terms, only if, agreed to in writing and signed by an authorized representative of KETTENBACH. The contents of such individual contracts and/or agreements shall be determined by the written contract executed by the authorized representative of KETTENBACH.

2. FORMATION OF CONTRACT

A quotation by KETTENBACH should not constitute a binding offer. A contract shall be formed only by KETTENBACH’s written acceptance of, or by KETTENBACH’s delivery pursuant to, the Purchaser’s purchase order and shall be governed exclusively by the terms of the relevant acceptance or delivery documents and by these Terms which shall be deemed accepted by the placing of a purchase order or by the acceptance of delivery by the Purchaser. The Purchaser’s written purchase order for goods shall be deemed to constitute a binding offer. Unless the purchase order provides otherwise, KETTENBACH shall be entitled to accept a purchase order within 14 days from receipt.

Title to and copyright in all marketing materials, cost calculations, drawings, and other documents shall remain with KETTENBACH. All such documents and all other information and data received by the Purchaser from KETTENBACH which are not common knowledge in the industry shall be held in confidence by the Purchaser and shall not be disclosed to any third parties without KETTENBACH's prior written consent.

3. PRICES AND TERMS OF PAYMENT

All of KETTENBACH's advertised prices are exclusive of federal, state, county, and municipal sales and/or use taxes. Sales tax along with shipping costs will be added and included to the final purchase order. Purchaser agrees to pay all sales taxes and shipping costs in addition to the advertised price for all products purchased.

Payments to purchase products are due when your order is placed. Upon written approval by an authorized representative of KETTENBACH, orders may be permitted on open account payable fifteen (15) calendar days after the order shipment.

KETTENBACH reserves the right to cancel, rescind, and/or revoke any purchase order, contract, or agreement as it sees fit prior to providing and/or shipping goods to Purchaser. In the event Purchaser remits payment to KETTENBACH, and KETTENBACH thereafter unilaterally chooses to cancel, rescind, and/or revoke the associated purchase order, contract, or agreement, Purchaser waives its legal right to allege a breach of contract and KETTENBACH shall refund Purchaser. In the event a purchase order, contract, or agreement is canceled, rescinded, and/or revoked by Purchaser, KETTENBACH reserves all legal causes of action against Purchaser. In addition, Purchaser agrees to pay KETTENBACH all costs and expenses KETTENBACH has already incurred during the fulfillment of the order, to include but not limited to, the cost of acquiring goods, plus a fifteen percent (15%) product restocking fee.

Purchaser shall not be entitled to any set-off or reduction of a purchase order for amounts Purchaser believes he or she is owed from KETTENBACH without the written consent of an authorized representative of KETTENBACH.

4. DELIVERY

All shipping and delivery dates are estimates. Shipping dates, delivery dates, and delivery time frames shall not be binding contracts or agreements unless confirmed in writing and signed by an authorized representative of KETTENBACH. In the event the Purchaser refuses to accept delivery of his or her products, and the products are returned to KETTENBACH, KETTENBACH shall be entitled to store the products at Purchaser's risk and expense. Purchaser shall pay KETTENBACH all expenses and costs it incurs prior to KETTENBACH releasing the products back to Purchaser.

If shipping or delivery, or other performance obligations of KETTENBACH set forth in these Terms, are delayed due to an act of God, global pandemic, unforeseeable and unavoidable events or circumstances to include but not limited to war, a natural disaster, economic lockdown, lack of energy resources, materials, manufacturing and operating disturbances, strike, lockout, fire, flood, tornado, or other resulting orders from authorities, KETTENBACH's obligations including

delivery and shipping of products shall be reasonably extended. KETTENBACH solely reserves the right to rescind, cancel, and/or terminate any contract with Purchaser if the disturbing event or circumstances last longer than fourteen (14) days.

KETTENBACH shall be permitted to make partial deliveries and or otherwise deviate from the shipping and delivery terms of a purchase order. Purchaser acknowledges and waives any right to require KETTENBACH's strict compliance with any terms or conditions of a purchase order. KETTENBACH shall also be entitled to make delivery in greater or lesser quantities than specified in a purchase order.

Products delivered or shipped by KETTENBACH shall be considered released to Purchaser when KETTENBACH provides the package to a delivery or shipping company. Purchaser solely bears all risk of loss, damage, or destruction to its products during shipping and delivery. KETTENBACH will ensure shipped or delivered products are insured against transportation risks only upon Purchaser's request and solely at the Purchaser's expense. Upon payment of shipping costs to KETTENBACH, purchaser acknowledges and agrees that KETTENBACH has chosen a suitable shipping service, suitable shipping method, and waives any request for loss, damage, or destruction of product insurance.

5. DUTY OF INSPECTION

Purchaser shall inspect the goods and products received from KETTENBACH upon receipt, without delay, within three (3) business days to determine if any of the products or goods were damaged during transit and are operating as intended. All shipments marked "fragile" shall be inspected for damages immediately upon receipt and in the presence of the shipping carrier.

Purchaser agrees to notify KETTENBACH within five (5) business days of receipt of any products or goods that an item was damaged during transit and/or not operating as intended. In the event Purchaser fails to timely notify KETTENBACH of any damaged or nonfunctioning products, KETTENBACH shall have no obligation to warrant or replace said products.

6. WARRANTY

KETTENBACH warrants that, at the time of shipment, the products supplied: (i) shall meet the Product specifications agreed by the Parties; (ii) shall not be adulterated or misbranded within the meaning of the U.S. Food, Drug and Cosmetic Act (the Act) or other applicable laws that are equivalent thereto in the Territory, and in which the definitions of adulteration and misbranding are substantially the same as those contained in the Act; (iii) shall be manufactured in accordance with Good Manufacturing Practices as defined in the Act and the World Health Organization Guidelines. The limitation period for warranty claims shall be twelve (12) months from receipt of the goods by the Purchaser. KETTENBACH shall only be responsible for products functioning improperly, due to no fault of the Purchaser, or products damaged solely by KETTENBACH's agents, employees, or representatives. KETTENBACH's warranty only applies to the original Purchaser and does not apply to any re-sold products.

THE EXPRESS WARRANTY SET FORTH IN THESE TERMS ARE EXCLUSIVE AND THE PARTIES HEREBY DISCLAIM, AND THE PURCHASER HEREBY WAIVES,

ANY AND ALL WARRANTIES IMPLIED UNDER APPLICABLE LAW INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, OR QUIET ENJOYMENT.

KETTENBACH shall not be liable for product defects resulting from inappropriate or improper use, faulty handling, intentional or negligent conduct, or normal wear and tear. KETTENBACH in no way warrants the useful life of any products.

Descriptive or explanatory statements regarding products or their intended uses, as well as, public statements or advertisements shall under no circumstances constitute a guarantee by KETTENBACH.

7. LIABILITY

This Agreement shall be interpreted in accordance with the commonly understood meaning of the English words and phrases hereof in the United States of America, and its performance of the parties hereto shall be construed and governed according to the laws of State of Delaware, without regard to conflicts of law principles that would provide for application of the law of a jurisdiction outside Delaware. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply to this Agreement.

(a) *Mediation.* The Parties agree that prior to instituting any legal action or judicial proceedings it is a condition precedent to a lawsuit for the Parties to attend mediation with a mutually agreeable mediator to take place in Wilmington, Delaware.

(b) *Right to Judicial Proceedings.* Each party shall have the right to institute judicial proceedings against the other party or anyone acting by, through or under such other party, in order to enforce the instituting party's rights hereunder through reformation of contract, specific performance, injunction or similar equitable relief.

(c) *Jurisdiction.* THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS OF DELAWARE. VENUE FOR ANY DISPUTES BETWEEN THE PARTIES SHALL ONLY BE APPROPRIATE IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE OR THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF DELAWARE.

(d) *Limitation of Damages.* KETTENBACH SHALL NOT BE LIABLE TO PURCHASER, OR ANY OTHER PERSON FOR ANY CONSEQUENTIAL WHATSOEVER (INCLUDES LOST REVENUES AND PROFITS, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGE), INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE). THIS WAIVER OF CONSEQUENTIAL DAMAGES IS TO BE CONSTRUED AS BROADLY AS PERMITTED BY DELAWARE LAW. KETTENBACH'S LIABILITY TO PURCHASER, EITHER THROUGH CONTRACT OR TORT, FOR ANY CAUSE OR COMBINATION OF CAUSES IN THE AGGREGATE

LEADING TO DAMAGES IS LIMITED AND CAPPED AT AN AMOUNT NO GREATER THAN THE AMOUNT THE PURCHASER PAID KETTENBACH FOR THE PRODUCT IN QUESTION.

(e) *Concurrent Claims.* The Parties waive all tort causes of action that may arise from the same set of facts and occurrences concerning the negotiation, execution, or performance of this Agreement.

In the event a dispute arises to enforce the terms and conditions of these Terms, the prevailing party shall be entitled to collect reasonable attorney and expert witness fees and costs from the non-prevailing party. KETTENBACH accepts no liability for public statements or advertisements of third parties who have not been previously authorized to make said statements or advertisements by an authorized representative of KETTENBACH. Purchaser shall have the sole obligation to limit and mitigate any alleged damages he or she may incur as a result of the actions of KETTENBACH.

PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, USE OF KETTENBACH PRODUCTS IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH PURCHASER. KETTENBACH PRODUCTS ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY UNLESS EXPRESSLY STATED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY KETTENBACH SHALL CREATE A WARRANTY.

8. RETENTION OF TITLE

Title to products or goods delivered shall remain with KETTENBACH until all amounts owed KETTENBACH from or in connection with the business relationship between the Purchaser and KETTENBACH have been paid. In the case of open accounts, the retained title to goods and products shall secure all respective balances due to KETTENBACH. Purchaser shall not resell, transfer, assign, or gift any goods or products that have not been fully paid for. Purchaser shall not be entitled to pledge, offer a security interest, transfer title to, or dispose of any goods subject to the retention of title by KETTENBACH. Purchaser shall treat the products and goods subject to retention of title with care for the duration of the retention of title timeframe. Upon request of KETTENBACH the Purchaser shall ensure the goods subject to retention of title are insured, provide KETTENBACH with proof of insurance, and assign its claims arising from the insurance contract to KETTENBACH.

In case the Purchaser defaults on its performance obligations pursuant to an open account, KETTENBACH may, without prejudice, request return of the goods or products subject to retention of title after rescission of the contract and may dispose of the goods subject to retention of title in order to obtain satisfaction of the Purchaser's outstanding debts.

9. RETURN OF PRODUCTS

Unless goods or products are returned to KETTENBACH based on a valid and justified warranty claim, the Purchaser shall not be entitled to return goods to KETTENBACH after thirty

(30) days. All Products returned within thirty (30) days in its unopened original packaging will receive a full refund. In the event products or goods are returned to KETTENBACH more than thirty (30) days after delivery which are not subject to a valid justified warranty claim, KETTENBACH reserves the right to return the goods or products to the Purchaser at the Purchaser's sole expense. KETTENBACH also reserves the right to determine whether the product can be resold. If the product is re-sellable, and KETTENBACH agrees to accept the product return after thirty (30) days, the refund will be subject to a fifteen percent (15%) of the purchase price restocking fee which will be automatically deducted from the refund. KETTENBACH shall not assume any risk of loss to any goods or products returned to KETTENBACH.

To return products Purchaser must:

- a. Contact KETTENBACH at 1-877-532-2123 or custservice@kettenbachusa.com and receive a return authorization number prior to returning the product to KETTENBACH; and
- b. The products which you are returning must be received by KETTENBACH within 30 calendar days after the date of invoice.

KETTENBACH reserves the right to reject returns which do not comply with this policy. Purchaser is solely responsible for all shipping costs associated with returned products.

10. DATA PROTECTION

KETTENBACH accepts, retains, and processes personal data consistent with its respective privacy and data use policy.

11. INDEMNIFICATION

PURCHASER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS KETTENBACH, ITS AFFILIATES (AS DEFINED BELOW) AND ALL OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS THEREOF (REFERRED TO BELOW AS INDEMNITEES) HARMLESS FROM ALL CLAIMS, DEMANDS, SUITS, OR ACTIONS (INCLUDING ATTORNEYS' FEES INCURRED IN CONNECTION THEREWITH) WHICH MAY BE ASSERTED AGAINST KETTENBACH FOR ANY KIND OF DAMAGES (CIVIL OR CRIMINAL) INCLUDING WITHOUT LIMITATION DAMAGE OR INJURY TO PROPERTY OR PERSONS AND INCIDENTAL AND CONSEQUENTIAL DAMAGES, PRODUCT DEFECT AND LIABILITY CLAIMS, NEGLIGENCE CAUSES OF ACTION, FAILURE TO WARN, PENALTIES FOR IMPROPER REPRESENTATIONS AND/OR MARKETING, MISUSE OR IMPROPER USE OF ANOTHER'S INTELLECTUAL PROPERTY, REGULATORY PENALTIES, OR ANY MONETARY DAMAGES WHICH MAY BE SUSTAINED BY ANY THIRD PARTY OR ANY OF THE INDEMNITEES ARISING OUT OF OR INCIDENT TO THE CONDUCT OF PURCHASER'S OPERATIONS. FOR THE PURPOSE OF THESE TERMS, "AFFILIATE" SHALL MEAN, WITH RESPECT TO A PARTY, ANY COMPANY, NATURAL PERSON, PARTNERSHIP OR OTHER BUSINESS ENTITY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH SUCH PARTY, WHERE THE TERM "CONTROLS" DENOTES THE OWNERSHIP, DIRECTLY OR INDIRECTLY, OF MORE THAN 50% OF THE VOTING SECURITIES OR OTHER OWNERSHIP INTEREST OF AN ENTITY, OR THE

POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT THE MANAGEMENT OR POLICIES OF AN ENTITY, WHETHER THROUGH THE OWNERSHIP OF VOTING SECURITIES, BY CONTRACT, OR OTHERWISE (WITH CORRELATIVE DEFINITIONS FOR THE TERMS “CONTROLLED BY” AND “COMMON CONTROL”). THIS INDEMNIFICATION PROVISION IS MEANT TO BE CONSTRUED AS BROADLY AS PERMITTED UNDER THE APPLICABLE LAW.

12. NOTICES

All customer service notices to KETTENBACH should be directed to:

Kettenbach L.P.
custservice@kettenbachusa.com
1-877-532-2123

All legal notices to KETTENBACH should be directed to its registered agent:

National Registered Agents, Inc.
1209 Orange Street
Wilmington, Delaware 19801

13. MISCELLANEOUS

If any of the terms and conditions contained within these Terms is held invalid or unenforceable, the validity of the remaining terms and conditions shall remain unaffected. The invalid or void provision shall be replaced by a valid provision which is consistent with the intent of the replaced provision.

Purchaser shall have no right to use any of the intellectual property of KETTENBACH, to include but not limited to, service marks, trademarks, copyrighted materials, confidential and proprietary information.

The Purchaser shall have no right to assign any of its rights or obligations to any third parties.

None of the conditions or provisions of these Terms shall be held to have been waived by any act or knowledge on the part of either party, except by an instrument in writing signed by a duly authorized officer or representative of the parties. Further, the waiver by either party of any right hereunder or the failure to enforce at any time any of the provisions of these Terms, or any rights with respect thereto, shall not be deemed to be a waiver of any other rights hereunder or any breach or failure of performance of the other party.

The Purchaser represents and warrants he or she is qualified and permitted to enter into these Terms and the Terms do not conflict with and are not inconsistent with any of his or her other contractual obligations.

These Terms supersede and cancel any previous agreements or understandings, whether oral, written or implied, heretofore in effect and sets forth the entire agreement between the Purchase and KETTENBACH with respect to the subject matter hereof. There are no representations, promises, warranties, covenants, or undertakings between the parties other than those expressly set forth in these Terms.