

## TERMS AND CONDITIONS OF SALE

### 1. Sale of Products.

(a) All shipments, services, sales and quotations between K2 Systems, LLC (“**Seller**” or “**K2**”) and the purchaser named herein (“**Purchaser**”) of K2’s products and services set forth herein (“**Products**”) shall be subject to these Terms and Conditions of Sale (the “**Terms**”). Unless expressly rejected, these Terms shall be deemed incorporated into each agreement (“**Contract**”) between K2 and Purchaser. Purchaser acknowledges receipt hereof and accepts the Terms. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS CONTAINED IN ANY RESPONSE HERETO BY PURCHASER OR IN PURCHASER’S INITIAL ORDER ARE HEREBY REJECTED BY K2 WITHOUT NEED OF FURTHER NOTICE OF REJECTION AND SHALL BE OF NO EFFECT NOR IN ANY CIRCUMSTANCES BINDING ON K2. K2’s acceptance of any order offered by Purchaser is EXPRESSLY MADE CONDITIONAL on Purchaser’s assent to these Terms, and under no circumstances will any terms or conditions other than these Terms apply to K2’s sale of the Products, except if such other terms or conditions have been expressly accepted in writing by K2. If K2 does accept terms or conditions that differ from these Terms, such other terms and conditions shall apply only to the transaction at issue, and in particular not to any other past or future transactions.

(b) K2’s quotations are not binding on K2. Each order of Products shall be in writing and no order of Purchaser shall be binding on K2 until the earlier of (i) shipment to Purchaser of Products or (ii) transmittal of a written acceptance by K2. K2’s failure to respond to Purchaser’s order within thirty (30) days after receipt of the order shall be a rejection of the order.

(c) Purchaser may not cancel any order after it has become binding pursuant to subsection (b) above. K2 may cancel all accepted orders and deliveries of Products if Purchaser (i) makes an assignment for the benefit of creditors; (ii) becomes party to a voluntary or involuntary proceeding of insolvency, bankruptcy or reorganization; (iii) generally becomes unable to pay its debts as they become due; (iv) fails to remit

payment to K2 in accordance with the terms hereof or under any other agreement between K2 and Purchaser; or (v) breaches any other term, provision, or condition contained in these Terms.

(d) All references in sales brochures, technical data sheets, and offers as to specifications, price and other details of the Products are approximate and shall not be binding on the K2 unless expressly agreed to in writing. K2 may, from time to time, update and replace Products in its line. K2 reserves the right to substitute updated Products, provided that such updated Products meet the specifications of the Products ordered by Purchaser in all material respects and are sold at the same price or less as the ordered Products.

(e) Purchaser acknowledges that K2’s acceptance of any purchase order is dependent on K2’s prior approval of Purchaser’s credit. Purchaser acknowledges that K2 may demand assurances of Purchaser’s ability to pay by requesting such trade or banking references or a letter of credit or such other information as deemed adequate by K2.

### 2. Delivery and Title.

(a) All prices quoted by K2 shall be deemed to be agreed upon for shipments to be delivered EXW Incoterms 2020.

(b) Assembly, installation, shipping, packing, export clearance (to the extent applicable), and insurance will be included on the invoice as separate line items relating to each Product.

(c) If Purchaser fails to accept delivery of the Product, K2 shall have the right to store the Product at the Purchaser’s cost and expense until such time as K2 can sell the Product to a third party for a reasonable price.

(d) Purchaser shall indemnify K2 for the cost of recovery and recycling of packaging of Products that Purchaser does not choose to dispose of itself. This indemnification obligation also shall apply where K2 is under a statutory obligation to recover and/or recycle packaging.

(e) All dates of delivery set forth in an accepted order are approximate and non-binding on K2, unless the date has been expressly confirmed as “binding” by K2 and all prerequisites for delivery that are Purchaser’s responsibility in accordance with the Terms are met and confirmed by Purchaser upon request.

(f) If Purchaser requests any modification of the order after K2’s acceptance, K2 shall have the right to extend the delivery date as reasonably needed to complete Purchaser’s changed order and to adjust the terms of sale and purchase price in K2’s sole discretion.

(g) K2 reserves the right to make partial shipments. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept the remaining delivery.

(h) Notwithstanding the “EXW” Incoterm, title for Products shall pass from K2 to Purchaser upon payment of the invoice price for the covered products. Purchaser shall advise K2 without delay of any liens that may attach to the Products as well as any damage suffered by the Products.

(i) K2 shall not be liable to Purchaser for failure to deliver to Purchaser any or all of the Products in accordance with the Contract if such failure to deliver is caused by the incorrect and/or delayed supply to K2 of such Products (or any components thereof) by its suppliers.

### 3. Acceptance.

Purchaser shall inspect all Products immediately following arrival thereof at the destination, and shall give written notice to K2 within five (5) days of any claim that the Products are nonconforming or defective, provided that a reasonable inspection should have revealed such non-conformity or defect. If Purchaser shall fail to give such notice within five days, Purchaser shall be deemed to have accepted the Products.

### 4. Terms of Payment & Prices.

(a) Unless otherwise agreed to in writing, all prices quoted by K2 are in U.S. Dollars. For customers located outside the U.S., all prices quoted

by K2 are exclusive of excise taxes, customs duties, and VAT. Payment terms for Products shall be thirty (30) days net unless otherwise specified in an applicable invoice. All invoices shall be paid by Purchaser upon receipt without any deduction, unless otherwise agreed. If an invoice is not paid in full within thirty (30) days following the date of invoice, the invoice shall be deemed to be in default whether or not K2 has reminded the Purchaser of its payment obligation. K2 shall be entitled to charge interest on the delinquent invoice in the amount of (i) 18% per annum or (ii) the highest rate permitted by applicable law. The foregoing shall be in addition to and not in lieu of any other remedies K2 may have at law or in equity for such delinquency.

(b) Purchaser shall have no right of offset by virtue of any claim against K2, unless K2 has acknowledged the validity and amount of such claim in writing or Purchaser’s claims have been confirmed by a final judgment entered by a court or arbitral tribunal.

(c) Prices for Products are subject to change without notice until a purchase order is accepted.

### 5. Responsibilities of Purchaser.

(a) It shall be Purchaser’s responsibility to comply with any technical guidelines, such as assembly and/or installation requirements, which K2 may issue from time to time.

(b) Purchaser shall conduct its own due diligence with respect to any service provider Purchaser may use. If K2 identifies a third-party service provider for Purchaser, K2 shall not be deemed to have assumed any liability with respect to the performance of such third-party service provider.

### 6. Limited Warranties.

(a) The warranties and disclaimers set forth in K2’s PRODUCT LIMITED WARRANTY TERMS AND CONDITIONS (the “**Warranty**”), as in effect as of the time K2 accepts the Purchaser’s order at issue, shall apply to the Products referenced in such order. The Warranty is incorporated herein by reference. The current version of the Warranty is available from K2 upon written request by Purchaser and on K2’s website. To the extent any provisions of

the Contract conflict with the Warranty, the terms of the Warranty shall apply. Purchaser is hereby authorized to pass through such Warranty to its customers and end users.

(b) Other than the warranty contained in this Section, K2 makes no warranty and disclaims all liability for the infringement of third party intellectual property rights arising from the Purchaser's use of the Product.

**(c) EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY SET FORTH IN THE WARRANTY, K2, NOR ANY PERSON ON K2'S BEHALF, HAS NOT MADE AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER REGARDING THE PRODUCTS AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE, OR OTHERWISE.**

(d) PURCHASER ACKNOWLEDGES AND AGREES THAT IF PURCHASER RECEIVES NON-CONFORMING PRODUCT, PURCHASER'S WARRANTY REMEDIES ARE LIMITED TO THE EXCLUSIVE REMEDIES OF (1) RETURN OF THE PRODUCT AND REPAYMENT OF THE PRICE, OR (2) THE REPAIR AND REPLACEMENT OF NON-CONFORMING PRODUCT OR PARTS, AND PURCHASER ACKNOWLEDGES AND AGREES THAT IT SHALL BE AT THE EXCLUSIVE DISCRETION OF K2 AS TO WHICH REMEDY SHALL BE AVAILABLE TO PURCHASER IF A DISPUTE ARISES.

(e) PURCHASER ACKNOWLEDGES AND AGREES THAT THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES AND THAT THEY SHALL APPLY EVEN IF THE CIRCUMSTANCES CAUSE THEM TO FAIL OF THEIR ESSENTIAL PURPOSE.

7. Indemnification.

Purchaser shall defend, hold harmless, and

indemnify K2, and its parents, subsidiaries, and affiliates, and the directors, members, officers, managers, attorneys, employees, and agents of each from and against all claims asserted by third parties, including governments, for damages or other relief arising out of, or relating to, or alleging: (i) the breach of any obligation for which Purchaser is responsible under the law, the Contract, or these Terms; (ii) any negligence, gross negligence, or willful misconduct of Purchaser or its personnel; (iii) any act or omission by Purchaser that results in personal injury, death, or damage to property; or (iv) Purchaser's infringement of intellectual property rights of third parties.

8. Limitation of Liability.

**(a) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN ALL EVENTS, THE LIABILITY OF K2 HEREUNDER, WHETHER BASED IN TORT, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT IN QUESTION.**

**(b) K2 SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF ANY CONTRACT OR OF THIS CONTRACT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY (A) FOR INTERRUPTION OF USE, FOR LOSS OR INACCURACY OR CORRUPTION OF DATA, OR COST OF PROCUREMENT BY CUSTOMER OF SUBSTITUTE PRODUCTS, SERVICES, OR TECHNOLOGY; (B) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FROM LOST CONTRACTS OR BUSINESS; OR (C) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.**

(c) Purchaser acknowledges and agrees that K2 has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and limitations of liability set forth in these Terms, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail its essential purpose and cause consequential loss), and that the same form an essential basis for the bargain between the parties. Purchaser also

acknowledges and agrees that the limitations of liability in subsections (a) and (b) of this Section function and apply independently from the terms of the limited warranties provided by these Terms and the Warranty and that those limitations of liability shall apply even if the limited warranties fail of their essential purpose.

9. Limitation Period.

Any warranty claims and claims for damages based on actual or alleged defects of the Products shall be subject to the applicable statutory limitation period or to a limitation period of one year after the cause of action accrued, whichever is shorter.

10. Subcontractors.

K2 may make use of subcontractors to perform any of its obligations under the Contract, provided that the use of any such subcontractors shall not limit or restrict K2's obligations to Purchaser.

11. Miscellaneous.

(a) Notwithstanding anything to the contrary, K2 shall not be liable for any delay or failure to perform hereunder when such failure or delay is, directly or indirectly, caused by, or in any manner arises from fire, floods, accidents, epidemics or pandemics, civil unrest, acts of God, war, terrorism, governmental interference, embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or supplies, breakage of machinery or apparatus, transportation delays, or any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) beyond K2's control.

(b) Purchaser's failure to initial any clause hereof, shall have no effect on the enforceability of said clause.

(c) Purchaser shall not assign this contract—except for claims for payment—without the express prior written consent of K2.

(d) Except as otherwise expressly provided herein or in a written document signed by K2 and Purchaser, the Terms, Contract, and attachments and exhibits thereto constitute the entire agreement between K2 and Purchaser with respect to the subject

matter herein contained and supersede all prior agreements and communications between K2 and Purchaser, whether oral or written.

(e) No modification, limitation, waiver or discharge of this Contract or of any of its terms shall bind K2 unless in writing and signed by a duly authorized employee of K2.

(f) The failure of K2 to insist, in one or more instances, on performance by Purchaser in strict compliance with the terms and conditions hereof shall not be deemed a waiver or relinquishment of any right granted hereunder with respect to any succeeding breach of the same or other provision hereof.

(g) Each Party shall deliver all notices required hereunder by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or e-mail of a PDF document (with confirmation of receipt), or certified or registered mail (in each case, return receipt requested, postage prepaid) to the address set forth on the signature page hereto, or such other address as a party may hereafter specify with respect to itself by notice given in accordance with these Terms. To be effective, any notice sent by facsimile or e-mail must be promptly followed by delivery of a physical copy of such notice, in a manner permitted by the preceding sentence.

(h) The Contract shall be governed by, and construed, interpreted and enforced under the laws of the State of California without giving effect to conflict of laws principles, provided, however, that all aspects relating to arbitration hereunder shall be governed by the federal laws of the United States of America. **The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.**

(i) Each party irrevocably and unconditionally agrees that it will not commence any action of any kind whatsoever against the other party in any way arising from or relating to this Contract, including all accepted Purchaser order documents and exhibits, schedules, attachments and appendices attached thereto, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the United States District Court for the Southern District of California or, if such court does not have subject matter jurisdiction, the courts

of the State of California sitting in San Diego County, and any appellate court from any thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action only in the United States District Court for the Southern District of California or, if such court does not have subject matter jurisdiction, the courts of the State of California sitting in San Diego County. Each party agrees that a final judgment in any such action is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(j) In case any conditions of this Contract should be or become unenforceable under applicable law, the remaining provisions, stipulations, and conditions of this Contract shall not be affected thereby.

## 12. Execution in Counterparts.

Although not necessary to become binding, these Terms may be acknowledged and executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single agreement. Facsimile or PDF signatures will be deemed original signatures for all purposes under this agreement. Neither these Terms, nor any amended or modification of them may be executed by means of an electronic signature. When properly signed, these Terms may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original.