

# **Martin Kurz & Co., Inc.**

## **Standard Terms and Conditions of Sale**

**1. Purchase Orders:** Buyer agrees that the terms and conditions set forth herein shall be applicable to all quotations and purchase orders covering the sale of Seller's products and services and shall supersede all printed terms and conditions set forth in purchase orders used by Buyer and shall become an integral part of Buyer's purchase order. Seller shall not be deemed to have waived these terms and conditions of sale if it fails to object to terms and conditions appearing in Buyer's purchase order, and Buyer's acceptance of products or services called for in said orders shall constitute Buyer's acceptance of these terms and conditions of sale.

**2. Delivery, Title and Risk of Loss:** All delivery dates are approximate only until confirmed within 48 hours prior to shipment. Unless otherwise specified by Seller, delivery will be made and title will pass to Buyer F.O.B. carrier's equipment at or nearest the Seller's point of shipment to Buyer or Buyer's designated consignee. All risks of loss or damage shall pass to Buyer upon said delivery to carrier.

**3. Excusable Delays:** Seller shall not be liable for delays in delivery or performance due to (i) any cause beyond its reasonable control; (ii) any act of God, act of civil or military authority, governmental priority, strike or other labor disturbance, flood, fire, severe weather, epidemic, war, riot, or delay in transportation; (iii) an act of Buyer, delays by suppliers or subcontractors, or inability on account of a cause beyond the reasonable control of Seller to obtain necessary materials; or (iv) Seller's compliance in good faith with any applicable foreign or domestic government regulation or order whether or not it proves to be invalid. In the event of any such delay, there shall be no termination unless agreed by Seller, and the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

**4. Inspection:** Upon receipt of goods by Buyer at destination, Buyer shall perform an inspection of such goods within a reasonable period of time not to exceed 30 days. If upon such inspection the goods appear not to be in conformance with the contract, Buyer shall, within 30 days after the receipt thereof, notify Seller of such condition and afford Seller a reasonable opportunity to inspect the goods and make any appropriate adjustment or replacement. The remedies afforded Buyer under the paragraph entitled "Warranty" hereof shall be exclusive for defective goods discovered upon inspection.

**5. Payment:** Unless otherwise provided, payment for goods and services purchased from Seller shall be made in U.S. dollars upon delivery and at the prices stipulated. At its option and after review of appropriate financial data and references, Seller may extend payment terms on open account to within thirty (30) days after the date of delivery to the F.O.B. point. Buyer shall not delay any such net 30 payment for goods pending inspection under ¶4 above. No debits or adjustments to any payment shall be made without Seller's consent. Past due accounts may be assessed a finance charge of 1½% per month on any unpaid balance, and Buyer may take any reasonable means to secure payment of such balance. Payments by Buyers outside the U.S.A. must be made via wire transfer to Seller's account or as provided in any applicable letter of credit which has been accepted by Seller. Checks or drafts in any currency other than U.S. dollars, or drawn on any bank outside the U.S. will not be accepted for payment.

**6. Buyer's Financial Status:** Any order by Buyer shall constitute a representation that Buyer is solvent. Upon Seller's request, Buyer will provide written financial information to Seller evidencing Buyer's ability to pay according to the terms hereof.

**7. Warranty:** Seller warrants to Buyer that products manufactured and shipped by Seller shall be free from defects in materials and workmanship for a period of one (1) year after delivery by Seller to Buyer. At its sole option, Seller shall furnish to Buyer as its exclusive remedy under this warranty either (i) repair or correction of any defect, or (ii) replacement of the product, or (iii) a full or partial refund of the purchase price. This warranty shall be void and of no effect for any defects caused by tampering, alteration, misuse or abuse.

Any warranty claim shall be made in writing and accompanied by a return of the product to Seller's factory, freight prepaid. The foregoing warranty is exclusive and in lieu of all other warranties. MARTIN KURZ & CO., INC. EXPRESSLY DISCLAIMS ALL STATUTORY OR OTHER IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**8. Taxes:** In addition to the stipulated price of the goods and services delivered, along with any applicable freight, handling, expediting, packaging or other charges, Buyer shall pay upon demand any and all sales, use, excise, value-added or other taxes imposed by any taxing authority upon the price, sale, delivery or use of such goods and services.

**9. Limitation of Liability:** The price allocable to any product or service found to be the cause of any loss or damage to the Buyer shall be the ceiling limit on Seller's liability, whether founded in contract or tort (including negligence), arising out of, or resulting from (i) performance or breach of the contract of sale; (ii) the design, manufacture, delivery, sale, repair, replacement or (iii) the use of any such product or the furnishing of any such service. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall Seller or its suppliers be liable for any special, consequential, incidental or punitive damages.

**10. Dispute Settlement:** The validity, performance, interpretation and construction of this agreement, and any other matter arising out of the transaction contemplated hereunder shall be governed by the substantive laws of the State of North Carolina. In the event the parties are not able to resolve disputes through negotiation, such disputes shall be submitted to the American Arbitration Association for resolution according to the rules and procedures thereof. Any award made as a result of an arbitration proceeding may be entered as a judgment in any Court of the State of North Carolina with competent jurisdiction, and Buyer and Seller hereby agree to be subject to the jurisdiction of said Court.

**11. Acceptance:** Acceptance of any contract is expressly made conditional on Buyer's assent to the terms and conditions herein. If additional or different terms are proposed by Buyer, they shall be viewed as proposed modifications to this agreement as per the following paragraph.

**12. Entire Agreement:** In conjunction with Buyer's purchase order (whose terms and conditions are superseded hereby, cf. ¶1 hereof), the contract of which these terms and conditions are an integral part constitutes the entire agreement of Seller and Buyer, and no modification of this contract shall be binding unless in writing and signed by both parties hereto.

**13. Assignment:** The assignment or delegation by Buyer of any of its obligations or duties hereunder without the prior written consent of the Seller shall be void and of no effect.

**14. Confidential Information:** Any drawings, sketches or other documents furnished by Seller, and any design or other information relating to any product sold hereunder, are the confidential proprietary property of Seller. It is agreed that neither Buyer nor its employees in possession of any such information will neither copy nor publish nor otherwise disseminate any such documents or their contents to any other party without the express prior written consent of Martin Kurz & Co., Inc.

**15. Patent Indemnity:** If a claim, suit or action under patent is brought against Seller based on a design or specification furnished by Buyer, or on the performance of a process recommended by Buyer, or on the use by Buyer of any goods delivered hereunder in combination with other goods not delivered by Seller to Buyer, Buyer shall indemnify and hold Seller harmless therefrom.

**16. Cancellation or Breach:** If Buyer attempts to cancel or terminate this agreement, wrongfully rejects acceptance of goods or services tendered, fails to make payments due, or fails to comply with any of the terms and conditions as set forth herein, Buyer shall be deemed to be in breach of this contract, and Seller shall have the right to recover as damages full payment for any goods delivered. Buyer shall also reimburse Seller for its termination costs, including labor and materials for any goods in process, plus a reasonable allowance for profit for any work terminated.