



KIMCO DESIGN AND MANUFACTURING GENERAL TERMS AND CONDITIONS OF PURCHASE

ACCEPTANCE This purchase order constitutes Buyer's offer to Seller and shall become a binding contract upon the terms and conditions set forth herein upon acceptance by Seller, either by returning the acknowledgement copy hereof or notification of commencement of performance. In the event that this order does not state price or delivery, Buyer will not be bound to any price or delivery to which has not been specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions of this purchase order are hereby objected to, and shall be void and of no effect, unless specifically agreed to in writing by Buyer. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by Buyer. This purchase order, together with such modifications as are accepted in writing by Buyer, constitutes the entire agreement between the parties.

CHANGES By written order, Buyer may, from time to time, order work suspension or make changes in quantities, drawings, designs, specifications, place of delivery, delivery schedules, and methods of shipment, packaging, property, and services of Seller. If any such change causes an increase or decrease in the price of this purchase order or in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for adjustment within 30 days after the change is ordered and an equitable adjustment shall be made. Nothing in this clause shall excuse Seller from proceeding immediately with the purchase order as changed. Whether made pursuant to this clause or by mutual agreement, changes shall not be binding upon Buyer except when confirmed in writing by a member of Buyer's Purchasing Department. The issuance of information, advice, approvals or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion and shall not affect Buyer's and Seller's rights and obligations hereunder unless the same is in writing that is signed by a member of Purchasing.

DELIVERY Time is and shall remain of the essence of this order, and no acts of Buyer, including without limitation modifications of this order or acceptance of late deliveries, shall constitute waiver of this provision. Delivery shall be strictly in accordance with the delivery schedule set out or referred to on this purchase order. Buyer may refuse to accept, or return at Seller's risk and expense, any shipments made in excess of Buyer's order or in advance of required delivery dates, or at Buyer's option, to accept early deliveries and defer payment on such deliveries until such dates. Seller shall notify Buyer immediately of any actual or potential labor dispute that is delaying or threatens to delay the timely performance of this order. If deliveries are not made at the specified time, Buyer, in addition to its other remedies, reserves the right to cancel or to purchase elsewhere, and hold Seller accountable therefore.

PACKAGING All materials shall be suitably packed, marked, and shipped according to the requirements of common carriers in a manner to secure lowest transportation costs and no additional charge shall be made to the Buyer unless otherwise stated herein. No charge shall be made by Seller for drayage or storage unless otherwise stated herein. No charge will be allowed for boxing, packing or crating unless agreed upon in writing.

Packing slips must accompany each shipment and the purchase order number shall be placed on each packing slip.

INSPECTION AND RECEIPT OF GOODS All goods are subject to inspection, testing, and final acceptance or rejection by KimCo Design and Manufacturing. In the event that goods are delivered in a defective condition, or do not meet the specifications on file or provided, KimCo Design and Manufacturing shall have the right to choose from among the following remedies: (1) return said goods to the supplier, at their expense, for repair or replacement; (2) repair the defect itself at the suppliers expense and to deduct such cost from the original price agreed to for said goods; or (3) exercise any and all other remedies available to it by law.



WARRANTIES In addition to Seller's standard warranties with respect thereto, Seller warrants to Buyer and its Customers that all items delivered and all services rendered hereunder will conform with the requirements hereof and will be free from defects.

In addition to other remedies that may be available by law or in equity, Buyer may, at its option, return any nonconforming or defective items to Seller or require correction or replacement at the location of the item at the time the defect is discovered – all at Seller's risk and expense. Seller shall repay such portion of the contract price or such additional amount as is equitable under the circumstances. Acceptance of items by Buyer therefore shall not relieve Seller of its responsibilities hereunder.

CONFIDENTIALITY All Buyer originated drawings, specifications, designs or other information furnished by Buyer to Seller shall be maintained in confidence by the Seller and shall not be reproduced, disclosed, duplicated or used, except to the extent required for the performance of this order, without the Buyer's prior written consent.

ARBITRATION

THE PARTIES WILL SUBMIT TO BINDING ARBITRATION ANY DISPUTE ARISING OUT OF THIS WARRANTY. THE ARBITRATION WILL BE CONDUCTED BY A SINGLE ARBITRATOR IN SALT LAKE CITY, UTAH, UNDER THE EXPEDITED PROCEDURES OF THE COMMERCIAL RULES OF ARBITRATION OF THE AMERICAN ARBITRATION ASSOCIATION; PROVIDED, THAT THE PARTIES WILL NOT BE REQUIRED TO UTILIZE THE SERVICES OF THE AMERICAN ARBITRATION ASSOCIATION AS PROVIDER IN ANY SUCH ARBITRATION. THE ARBITRATION AWARD MAY BE ENFORCED IN ANY COURT OF COMPETENT JURISDICTION. THE SELLER HEREBY CONSENTS TO THE JURISDICTION OF THE COURTS OF THE STATE OF UTAH OR THE COURTS OF THE UNITED STATES LOCATED IN THE STATE OF UTAH, AS THE CASE MAY BE, WITH VENUE IN SALT LAKE COUNTY, IN ANY ACTION TO ENFORCE THE ARBITRATION AWARD. THIS WARRANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, IRRESPECTIVE OF ANY CONFLICTS OF LAWS PROVISIONS, EXCEPT AS SUCH LAWS MAY BE PREEMPTED OR SUPERSEDED BY THE LAWS OF THE UNITED STATES.