

**GEKA MANUFACTURING CORPORATION (hereinafter "GEKA")**  
**TERMS AND CONDITIONS OF SALE**

**1. The Contract**

From time to time, Customer shall issue GEKA a Purchase Order for the purchase of certain GEKA goods and/or services (hereinafter individually and collectively "Product" or "Products"). Each such Purchase Order shall be issued pursuant to these "Terms and Conditions of Sale (hereinafter the "Contract")" and shall be incorporated herein by reference. Further, each Purchase Order shall be subject to the terms and conditions set forth in this Contract.

Herein, GEKA and Customer may be individually referred to as the "Party" or collectively as the "Parties" as required by context.

**2. Lead Times & Delivery**

Customer acknowledges that lead times are subject to applicable market conditions. GEKA reserves the right to revise lead times applicable to an order based on the date that an order is issued to GEKA by Customer.

Unless otherwise mutually agreed in writing, all orders will be shipped Ex-Works GEKA's production facility. Customer shall acquire title to the Products upon shipment from GEKA's shipping location/facility and Customer shall bear the risk of loss or damage to the Products upon delivery. The term "delivery" shall be construed in accordance with the current version of the INCOTERMS.

**3. Prices & Taxes**

Except as otherwise agreed in writing GEKA's prices are net prices and are exclusive of any associated additional costs, including (but not limited to) charges for freight, packing, carriage, customs duties or taxes. Customer and GEKA shall each be responsible for the payment of their own respective foreign, federal, state, and local taxes, license fees, tariffs or other governmental charges (collectively "Charges") assessed or payable by law by such Party in connection with an order. Any such Charges attributable to Customer which GEKA may be obligated to collect shall be added to the GEKA invoice as a separate charge. To the extent applicable, Customer may provide a valid sales or other tax exemption certificates, which will be honored and accepted by GEKA.

**4. Order Acceptance**

Upon receipt of shipments, Customer shall inspect the shipment and confirm quantities and condition of Products enclosed therein. All shipments shall be deemed to include the correct quantity of the Product unless the Customer delivers written notice to GEKA of any deficiencies within ten (10) days of receipt of the shipment.

**5. Terms of Payment**

Except as otherwise agreed, payment shall be due to GEKA net thirty (30) days after Customer's receipt of an invoice. GEKA reserves the right to immediately suspend any and all work including, but not limited to, the manufacture of Product, for payments which are past due.

In the event of Customer's bankruptcy or insolvency or any proceeding is brought against Customer, voluntarily or involuntarily, under bankruptcy or similar insolvency laws, GEKA shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the Customer and shall receive reimbursement for its proper cancellation charges and expenses. GEKA's rights under this paragraph are in addition to all rights available to it at law or in equity. If a customer fails to

pay any charges when due or otherwise defaults on its obligations, then Customer shall pay all costs and attorneys' fees incurred by GEKA and GEKA shall have the right to terminate this Contract immediately upon such nonpayment or default.

**6. Force Majeure**

CUSTOMER and GEKA shall each be excused from the performance of their respective obligations under this Contract when and to the extent that such performance is delayed or prevented by any circumstances reasonably beyond its control, including, but not limited to, fire, explosion, acts of terrorism, strike or labor dispute, or any act or omission of any governmental authority or any group purporting to have authority (each hereinafter separately and collectively referred to as a "Force Majeure"). To be so excused, the affected Party must provide prompt written notice of the Force Majeure to the other Party and promptly undertake reasonable efforts to mitigate the conditions giving rise to the claim.

**7. Compatibility & Functional Application Testing**

Unless otherwise agreed in connection with GEKA's specific scope of work and/or deliverables, it shall be the sole responsibility of the Customer to test the Products for compatibility with the contents that the Customer intends to use with GEKA packaging and for fitness for the Customer's intended purpose and application.

**8. Ownership of Intellectual Property**

Nothing in this Contract is intended to give Customer or GEKA any rights to the intellectual property or technology of the other Party. Neither Customer, nor GEKA, shall acquire any right, title or interest in or to any existing intellectual property (including, without limitation, designs, patents, copyrights and trade secrets) of the other Party.

All discoveries, inventions, developments, improvements and techniques pertaining to GEKA's Products (whether capable of patent or like protection or not) which GEKA, or employees, agents or subcontractors of GEKA may develop, conceive or make, alone or with others, and which may directly or indirectly result from or in the performance of the work by GEKA, shall be the sole and absolute property of GEKA.

**9. Materials**

Customer acknowledges that unless otherwise agreed in advance, the suppliers from whom raw material(s) are sourced shall be left to GEKA's sole discretion.

**10. Variation of Quantity**

Unless otherwise mutually agreed in writing, GEKA may complete an order with a maximum variation of five percent (5%) overrun or underrun regarding the amount of Product ordered. In such event, Customer agrees to compensate GEKA for the actual quantity of Product delivered.

**11. Warranty**

GEKA warrants that GEKA Products will be free from defects in material, workmanship and design (if of GEKA's design) for a period of one (1) year from the date of sale. GEKA shall replace any defective Product which is identified during the warranty period. Replacement Product shall be warranted for a period of one (1) year from the date of shipment.

The warranties contained herein will terminate if Customer or a third party undertake inappropriate or improper modifications of the Product. Excluded from GEKA's warranty are deficiencies or nonconformities resulting from normal wear and tear, improper storage or other reasons beyond GEKA's control.

GEKA MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OTHER THAN AS SPECIFIED IN THIS CONTRACT. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

#### **12. Storage of Product**

Subject to any negotiated shipping terms applicable to the order, within five (5) business days of GEKA's notification of readiness for shipment, Customer shall either stand ready for receipt of Product or otherwise dispatch Customer's preferred vendor to implement shipping. In the event Customer fails to facilitate shipment or refuses to accept shipment by GEKA of Product within ninety (90) days of notice of readiness for shipment, GEKA reserves the right to place the Product in storage and all related storage charges shall be for Customer's account. Likewise, all payments owed for such Product shall become immediately due.

#### **13. Suspension and Termination**

In the event of a material default in the performance of an order by either Customer or GEKA, the non-breaching Party shall provide notice of the breach to the Party in default. Thereafter, the Party in default shall be granted a minimum of seven (7) days to address and cure such default.

GEKA reserves the right to terminate any Customer order due to a default which is not cured. If the Parties have negotiated a cancellation schedule, then the applicable cancellation charges as of the effective date of termination of the order shall be the termination payment made to GEKA. In such event, the termination payment shall constitute GEKA's full compensation and shall include all profit, costs and expenses payable to GEKA for the work.

If a cancellation schedule has not been negotiated, then the payment made to GEKA shall be:

- A. Payment for the portion of the work produced and services performed as of the effective date of termination of the order, including reimbursement for reasonable overhead and profit on such completed work and services; and
- B. payment of all unavoidable third-party charges and expenses incurred by GEKA as result of the termination of the order.

#### **14. Confidentiality**

Customer acknowledges and agrees that any information and/or materials GEKA or its personnel, subcontractors or agents disclose to Customer including, but not limited to, engineering drawings, proofs, sketches and designs, either directly or indirectly shall be kept in strictest confidence. Except as otherwise agreed, GEKA information shall not be disclosed to any third parties without GEKA's express prior written consent.

#### **15. Indemnification**

GEKA shall indemnify and hold harmless Customer from losses, damages, claims, suits, demands, judgments, and liabilities,

including Customer's reasonable attorney fees and expenses (hereinafter individually and collectively referred to as a "Claim"), arising out of this Contract or any order issued pursuant hereto. GEKA's indemnity obligations shall be to the proportional extent that a Claim is attributable to GEKA's negligence, fault or willful misconduct. Any request for contribution or indemnity between GEKA and Customer shall be resolved on the basis of each Party's respective percentage of negligence after resolution of the third party Claim on which such request is based

#### **16. Consequential Damages**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, CUSTOMER AND GEKA SHALL NOT HAVE ANY LIABILITY TO EACH OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE FOR ANY MATTER WHATSOEVER ASSOCIATED WITH THIS CONTRACT OR ANY ORDER ISSUED PURSUANT TO THIS CONTRACT, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS A RESULT OF BREACH OF CONTRACT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE.

#### **17. Limitation of Liability**

CUSTOMER'S AND GEKA'S RESPECTIVE LIABILITY TO EACH OTHER WITH RESPECT TO ANY CLAIM WHETHER BASED CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER ANY WARRANTY, STRICT LIABILITY OR OTHERWISE SHALL NOT EXCEED THE GREATER OF: A) THE PURCHASE ORDER VALUE OF THE ORDER A CLAIM ARISES IN CONNECTION WITH; OR B) TEN THOUSAND DOLLARS (\$10,000.00).

NOTWITHSTANDING THE PRECEDING, THE LIMITATION OF LIABILITY SPECIFIED ABOVE SHALL NOT APPLY TO DAMAGES WHICH ARE INCURRED AND ATTRIBUTABLE TO:

- I. A PARTY'S INDEMNITY OBLIGATIONS FOR THIRD PARTY CLAIMS; OR
- II. THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY FROM WHOM LIABILITY IS SOUGHT.

#### **16. Miscellaneous**

- A. **Compliance with applicable Laws, Codes and Standards:** The Parties mutually agree to observe and comply with all applicable codes, laws, rules and regulations of any governmental entity having jurisdiction in connection with the order. Furthermore, each Party acknowledges that it shall not reexport, resell, or otherwise dispose of any Product to a destination or person which would be contrary to applicable law, including U.S. sanctions and regulations.
- B. **Subcontractors:** Unless otherwise mutually agreed, GEKA retains the right to subcontract all or any portion of the work outlined in an applicable scope of work.
- C. **Assignment:** Neither Party shall assign this Contract without the express written consent of the other Party.
- D. **Severability:** If any provision in this Contract is found to be unenforceable, all other remaining provisions shall remain in full force and effect unless deletion or change of the provision which is invalid or

- unenforceable would substantially alter the economic effect of this Contract.
- E. **Waiver:** Any delay or failure of a Party to enforce any of the provisions of this Contract or to require compliance with any of terms, at any time, shall in no way affect the validity of the Contract, or any part thereof, and shall not constitute a waiver of the right of a Party to enforce any and each such provision thereafter.
  - F. **Notice:** All notices, demands or other communications between the Parties shall be given in writing.

- G. **Governing Law:** This Contract shall be governed by and construed in accordance with the laws of the State of New York.
- H. **Entire Contract:** This Contract, together with the exhibits, schedules and attachments specifically referenced herein, embodies the entire agreement and understanding between GEKA and Customer and, except as otherwise specifically state herein, there are no other contracts, agreements, and understandings either oral or written.

**ACKNOWLEDGED AND AGREED:**

GEKA MANUFACTURING CORPORATION

By: \_\_\_\_\_  
(Signature)

Name: Arnaud Brilland  
(Printed)

Title: Vice President of Sales, Americas

Date: \_\_\_\_\_

and

By: \_\_\_\_\_  
(Signature)

Name: Brad Thompson

Title: President

Date: \_\_\_\_\_

TO BE SPECIFIED

**[Insert Client Name on Above Line]**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Printed)

Title: \_\_\_\_\_

Date: \_\_\_\_\_