

MSD PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE.** This purchase order becomes a binding contract on the terms set forth herein when it is accepted either by Seller's acknowledgment or commencement of performance.
2. **TERMS.** All terms are as stated on this purchase order and these are the only terms which govern the purchase of goods and services that are the subject of this purchase order. Any terms or conditions stated by Seller's documentation that are different from, or in addition to, these terms and conditions, shall be of no force and effect and are expressly rejected by Buyer, and no course of dealing, usage of trade, or course of performance shall be relevant to explain or modify any term expressed in this purchase order. Invoices are not payable until each goods shipment is inspected and accepted by Buyer and/or the services are inspected and approved by Buyer. These terms prevail over any of Seller's general terms and conditions of sale regardless of whether or when Seller has submitted them, including if submitted after issuance of this purchase order on Seller's sales confirmation or otherwise. Notwithstanding anything to the contrary herein, if a written contract signed by both parties is in existence covering the sale of the goods and services, the terms and conditions of such contract will prevail to the extent they are inconsistent with these terms. If Buyer makes payment of an invoice within the period allowed for the purpose of obtaining any cash discount offered, such payment shall not constitute final acceptance, and shall not prejudice the right of Buyer to return articles, materials and/or equipment ("goods") found defective or which fail inspection, and to receive credit or reimbursement from Seller.
3. **PROGRESS REPORTS.** When requested by Buyer, Seller shall submit written periodic progress reports covering the specified period and containing the information specified by Buyer.
4. **PRICE.** This order may not be filled for a different quantity or price without Buyer's prior written consent. Whenever the price is not specified in the order, it must not be filled without Buyer's prior written consent at a price higher than last quoted or charged to Buyer. Unless otherwise stated, all prices are firm and are not subject to increase for the period stated in this order. All of the prices, terms, warranties, and benefits granted by Seller under this purchase order shall be comparable to or better than the equivalent terms being offered by Seller to any other customer. If Seller enters into arrangements with any other customer providing greater benefits or more favorable terms, this purchase order shall thereupon be considered amended to provide the same benefits and terms to Buyer.
5. **CHANGES.** Buyer may, at any time, and from time to time, by written order to Seller (a) make changes in the shipping and packing instructions, (b) increase or decrease the quantity of services and/or goods ordered, (c) change the drawings or specifications, (d) issue a suspension of work order, and/or (e) make changes in the delivery schedule. If any such changes cause an increase or decrease in the amount of work hereunder, or in the cost of performance or in the time required for performance, an equitable adjustment shall be made by Buyer in the contract price and/or the delivery schedule, and the purchase order shall be modified, in writing, accordingly. No such adjustment shall increase the purchase price of future deliveries by more than 10% of the original price. Termination charges shall be limited to no more than Seller's cost of raw materials and labor for the goods to be delivered to Buyer for the next 30 days as provided in the purchase order schedule and subsequent modifications thereto, and only if such raw materials cannot be used for another customer of Seller and provided such raw materials are delivered to Buyer. Any claim for adjustment under this section must be asserted within 30 days from the date the change is ordered, but nothing provided herein shall excuse Seller from proceeding with the purchase order as changed.
6. **CANCELLATION.** Buyer reserves the right to cancel all or any part of the undelivered portion of this order if Seller does not make deliveries as specified in the schedules or if Seller breaches any of the terms hereof including, without limitation, any warranties of Seller. Buyer's acceptance of a late delivery shall not constitute a waiver of any remedy or right to constitute a waiver of any subsequent schedule or delivery requirement. Buyer shall also have the right to terminate this order or any part hereof in the event of insolvency of Seller, Seller's filing of a voluntary or involuntary petition in bankruptcy, appointment of a receiver or trustee for Seller, or Seller's execution of an assignment for the benefit of creditors.
7. **INSPECTION.** All ordered goods are subject to final inspection and approval at destination by Buyer, notwithstanding prior payment. Buyer may reject any goods which contain defective materials or workmanship or do not conform to specifications, drawings, samples, or as ordered. Rejected goods may be returned at Seller's risk and expense at the full invoice price, plus all transportation charges. No replacement of defective goods shall be made unless specified in writing by Buyer. Seller shall provide and maintain a quality control system acceptable to Buyer for the goods covered by this purchase order, and Seller shall permit Buyer to review Seller's procedures, practices, processes and related documents to determine such acceptability. Seller is required to provide certifications for all raw materials. Buyer, Buyer's customers and relevant governmental authorities shall have right to inspect Seller's facilities and all records and documents relating to the goods at reasonable times. Such inspection by Buyer shall not relieve Seller of responsibility for defects found after delivery to Buyer. Goods may be inspected by Buyer under the sampling plans outlined in MIL-STD-105 (and amendments thereto) and/or ANSI Z1.9-1993: Sampling and Tables for Inspection by Variables for Percent Nonconforming and/or Sampling Procedures and Tables for Inspection by Attributes. Lots which fail to pass the examination may be 100% inspected by Buyer, and Seller shall be charged for such inspection time. Buyer may reject and return any portion of a shipment which may be defective or fails to comply with specifications, drawings, samples, or descriptions stated in the order without invalidating the remainder of the order. Buyer's failure to inspect goods upon delivery shall not be a waiver of any defects or of any rights or remedies which Buyer may have thereafter.
8. **PACKING AND SHIPMENT.** Deliveries shall be made as specified without charge for boxing, crating, carting, or storage, unless otherwise specified. Goods shall be suitably packed for protection of parts and to secure lowest transportation costs and in accordance with the requirements of common carriers. If there are any deviations from Buyer's shipping instructions without Buyer's permission which result in higher shipping charges, Seller is liable for the extra charges. A packing list shall accompany each shipment showing Buyer's order number, quantity, and a description of the goods. Buyer's count or weight shall be final and conclusive on shipments not accompanied by a packing list. Shipping receipts, original bills of lading, express receipts, and air bills shall be sent to Buyer's Accounts Payable Department on the date goods are shipped. Unless otherwise agreed in writing by the parties, all shipments are made FOB Destination. If Buyer specifies FOB origin, or freight charges for the account of Buyer, Seller shall: (1) route freight as specified by Buyer; (2) not insure or declare value unless specifically directed to do so; (3) for goods subject to released valuation, release goods at the restricted valuation to achieve the lowest available rate; (4) consolidate shipments on the same day to the same address on one waybill; (5) list all purchase order numbers on the waybill.
9. **ENGINEERING INFORMATION, TOOLS AND MATERIALS.** By accepting this order, Seller agrees it will not use any design, tools, patterns, drawings, materials, or any other information or equipment furnished by Buyer in the manufacture or design of any goods for any other purchaser, or for manufacture of larger quantities than herein specified without the prior written consent of Buyer. All special tools, dies patterns, jigs, or fixtures supplied by Buyer, or manufactured or otherwise acquired by Seller for the performance of this order and charged to Buyer are the property of Buyer. Such items are to be marked for identification as Buyer may designate and, upon completion or termination of this order, such items shall be returned to Buyer in good condition, reasonable wear and tear excepted. Seller shall also return all spoiled and surplus tools, patterns, and materials which are the subject of this purchase order, unless otherwise directed by Buyer in writing, and Seller agrees to replace, at Seller's expense, all items which are not so returned. Seller shall not charge for any storage, maintenance, or retention of any property of Buyer and all such property shall be retained or used at Seller's sole risk of loss or damage from all hazards.
10. **LIENS AND ASSIGNMENTS.** Seller agrees that with respect to any services rendered or subcontracted to others and any goods and/or equipment supplied by Seller or on Seller's behalf, Seller shall indemnify, defend and hold Buyer harmless if any mechanic's lien, encumbrance, or other security interest arises from supplying such services and/or goods. Buyer shall have absolute right to withhold all payment until Seller has provided Buyer with written releases from any third party that has supplied Seller with services and/or goods related to this purchase order. This purchase order and/or any services and/or goods covered hereby, and/or payments hereunder, shall not be assigned or encumbered without the prior written consent of Buyer. Any such assignments or encumbrances without Buyer's prior written consent shall be void. Breach of this provision shall give Buyer the right to cancel this purchase order.
11. **WARRANTIES.** Seller warrants that all services and/or goods shall be free from defects in labor, materials, workmanship and fabrication, shall comply with all pertinent drawings or specifications, and shall be merchantable and fit for the particular purpose intended by Buyer, shall not infringe the intellectual rights of a third party, and where design is Seller's responsibility, be free from defects in design. In the event of any conflict between Buyer's and Seller's specifications, Buyer's specifications shall prevail. Buyer's release or approval of data or drawings shall not relieve Seller from any warranty, including those arising from prior drawings and specifications of Buyer.
12. **INSURANCE.** During the term during which Seller provides Buyer the goods and/or services that are the subject of the purchase order and for a period of at least three (3) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers that is reasonably adequate to cover the risks associated with the goods and/or services that are the subject of the purchase order. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverages required in these terms. Seller shall provide Buyer with 30 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.
13. **SELLER OBLIGATIONS REGARDING SERVICES.** In addition to Seller's other obligations provided for herein, with respect to services provided under this purchase order Seller shall:
 - a) before the date on which the services are to start, obtain, and at all times during the term of the services, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the services;
 - b) comply with all rules, regulations and policies of Buyer, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Buyer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;
 - c) maintain complete and accurate records relating to the provision of the services, including records of materials used by Seller in providing the services. During the term of the services and for a period of three (3) years thereafter, upon Buyer's written request, Seller shall allow Buyer to inspect and make copies of such records;
 - d) obtain Buyer's written consent, which may be given or withheld in Buyer's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any services to Buyer (each such approved subcontractor or other third party, a "Permitted Subcontractor"). Buyer's approval shall not relieve Seller of its obligations under these terms, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this purchase order as if they were Seller's own employees. Nothing contained in these terms shall create any contractual relationship between Buyer and any Seller subcontractor or supplier;
 - e) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the services;
 - f) in addition to the obligations involving insurance provided for elsewhere in these terms, in the event the services are provided to Buyer at a facility owned or leased by Buyer, prior to commencing such services Seller shall provide Buyer with Seller's certificate of insurance and Seller shall ensure that such certificate of insurance names Buyer as an additional insured.
14. **EQUIPMENT PURCHASES.** In the event this Purchase Order relates to the purchase of machinery or equipment (collectively, "Equipment"), as security for Seller's performance of its obligations hereunder, Seller hereby assigns and pledges to Buyer a first priority security interest in all right, title or interest in or to any of the Equipment, but only up to the amount of any payments

advanced by Buyer to Seller in connection with the purchase of such Equipment. Upon Seller's failure to satisfy its obligations hereunder or the filing of a bankruptcy proceeding or assignment for benefit of creditors by Seller, in addition to other remedies available to Buyer under law or equity, Buyer will have the immediate right to pursue any or all of the remedies available to a secured party under the applicable Uniform Commercial Code or other applicable law or regulation relating to security interests.

15. **LIMITATION OF LIABILITY.** In no event shall Buyer be liable to Seller for any incidental, consequential or special damages including, but not limited to, any lost profits, lost savings, or other incidental damages, arising out of or connected with this purchase order, even if Buyer has been advised of the possibility of such damages. The foregoing limitation of liability shall remain in full force and effect regardless of whether Seller's remedies are determined to have failed of their essential purpose. Buyer's entire liability to Seller for any claim or cause of action arising hereunder (whether in contract, tort, or otherwise) shall not exceed the purchase price paid by Buyer for the services and/or goods which are the subject of such claim or cause of action.

16. **INTELLECTUAL PROPERTY PROTECTION.** Seller agrees to defend, indemnify and hold harmless Buyer, its affiliates and customers, and all persons claiming under Buyer, against all claims, demands, expenses, losses, and/or liabilities for actual or alleged infringement of any patent, copyright, mask work right, trademark, or similar right by the services and/or goods called for hereunder. Buyer shall have the right to control any such matter, and Seller shall reimburse Buyer for any expenses incurred in connection therewith. This provision shall not apply if such services and/or goods are made solely to Buyer's drawings or designs and the alleged infringement arises solely therefrom.

17. **GENERAL INDEMNIFICATION.** Seller shall, to the fullest extent permitted by law, protect, defend, indemnify, and hold Buyer harmless from and against any and all claims, liabilities, demands, penalties, forfeitures, suits, judgments, and the associated costs and expenses (including attorneys' fees), which Buyer may hereafter incur, become responsible for, or pay out as a result of: death or personal injuries (including bodily injury) to any person, destruction or damage to any property, contamination of or adverse effects on the environment, and any clean-up costs in connection therewith, caused in whole or in part by any negligent or willful acts, errors, or omissions by Seller, its employees, officers, agents, representatives, or subcontractors, related to the performance of this purchase order.

18. **NOTICE OF LABOR DISPUTES.** Whenever an actual or potential labor dispute delays or threatens to delay the timely performance of this purchase order, Seller shall immediately give written notice thereof to Buyer. Such notice shall include all relevant information with respect to such dispute.

19. **HAZARDOUS SUBSTANCE INFORMATION.** Seller shall provide Buyer with a Safety Data Sheet ("SDS") as defined in 29 CFR §1910.1200, or equivalent information, for any Hazardous Substance delivered pursuant to this purchase order. For purposes of this paragraph, "Hazardous Substance" shall be defined as provided by California Health and Safety Code §25316 and California Labor Code §6390, and shall include all hazardous chemicals and mixtures for which an SDS is required under the Occupational Safety and Health Act of 1970 (29 USCA §651 et seq.) and regulations promulgated under that Act. Nothing contained in this paragraph shall relieve Seller from complying with applicable federal, state, and local laws, codes, ordinances and regulations relating to Hazardous Substances.

20. **LIMITATION ON LEGAL ACTION.** Seller hereby agrees to limit all statutes of limitation on any claim or right under this purchase order to one (1) year if permitted by law, and otherwise to the minimum period permitted by law.

21. **APPLICABLE LAW.** This purchase order shall be deemed to have been executed and delivered in San Diego, California, and shall be construed and interpreted under the laws of the state of California, excluding the U.N. Convention on International Sale of Goods, and without regard to conflict of laws principles. Jurisdiction and venue with respect to any suit in connection with this purchase order shall reside in the courts of San Diego County, California. If any dispute arises out of this purchase order, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

22. **ENTIRE AGREEMENT.** The provisions contained on this purchase order and in any specially incorporated condition, drawing, price report, or other form constitute the entire agreement between the parties, and there will be no deviation therefrom unless accepted in writing by Buyer.

23. **CONFIDENTIALITY.** Any and all information and/or materials provided by Buyer to Seller shall be treated by Seller as strictly confidential and shall not be disclosed to third parties without the prior written consent of Buyer. To remove all doubt, this includes any and all purchase orders or references to KII or its customers.

24. **ARBITRATION.** All disputes concerning the terms and conditions of this purchase order and involving less than \$25,000 shall be subject to expedited binding arbitration before the American Arbitration Association ("AAA") before an attorney or expert who is knowledgeable and experienced in the field of commercial law and who is selected by mutual agreement of the parties. A party shall commence arbitration by delivering written notice to the other party. If the parties fail to agree on an attorney as arbitrator within 30 days after notice of the commencement of arbitration is delivered, arbitration shall be by the AAA in the city of Buyer's principal place of business, subject to the rules of the AAA then in effect. Judgement upon the award rendered in any arbitration may be entered in any court having jurisdiction of the matter.

25. **COMPLIANCE WITH LAWS.** At all times in the course of performing this purchase order, Seller shall strictly comply with all national, state, and local laws, rules, regulations, ordinances, orders, licenses, permits and other requirements of any governmental authority now or hereafter in effect. Seller shall furnish such documents as may be required to effect or evidence such compliance. Seller shall comply with all applicable laws regarding non-discrimination in terms and conditions of employment, payment of minimum wage and legally mandated employee benefits, and compliance with mandated work hours. Seller shall comply with all applicable laws regarding employment of underage or child labor and shall not employ children under the age of 16. Seller represents and agrees that it is in compliance with and shall abide by the provisions of (i) Executive Order 11246, (41 CFR 60-1.4); (ii) section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a)); (iii) section 4212 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-300.5(a), as amended; and (iv) the Immigration Act of 1987; unless exempted or inapplicable. Seller agrees to abide by all Buyer's rules and regulations while on Buyer's premises including, but not limited to, safety, health and hazardous material management and rules prohibiting misconduct on Buyer's premises such as physical or other forms of aggression against persons or property, harassment, intimidation and the like. Seller agrees not to provide foreign nationals from controlled countries, as defined by U.S. export regulations, as employees or contractors for work on any Buyer site. Seller also agrees that it will use its reasonable best efforts to ensure that its employees, agents, suppliers, and contractors will comply with the provisions of the U.S. Foreign Corrupt Practices Act (15 U.S.C. § 78dd-1, et seq.).

26. **PERSONAL DATA PRIVACY.** If in connection with the provision of the services or sale of the goods under this purchase order, Seller obtains any personal information or sensitive personal information of consumers or Buyer's employees, Seller will use such information only to the limited extent required for Seller to fulfill its obligations under this purchase order and for no other purpose. In no event will Seller sell or otherwise disclose or transfer such information in to obtain any direct benefit from such information. In addition, Seller will restrict, protect and otherwise treat such information consistent with any data privacy laws applicable to such information (including but not limited to the California Consumer Privacy Act and California Privacy Rights Act if applicable); will protect and disclose such information only as permitted by such laws; and will cooperate with Buyer in the event Buyer receives a legally authorized request from a consumer or employee relating to such information.

27. **ETHICAL PRACTICES AND CORPORATE SOCIAL RESPONSIBILITIES.** Seller will at all times conduct itself in an ethical and socially responsible manner in its business dealings and during the term during which it sells goods or provides services to Buyer, Seller will itself and will require any subcontractor and seller in its supply chain involved in providing goods or services hereunder to comply with: 1) Buyer's Supplier Code of Conduct and as it may be revised by Buyer from time to time; 2) Buyer's Supply Chain Corporate Social Responsibility Procurement Guidelines as it may be revised by Buyer from time to time and 3) Buyer's Sustainability Policies and Guidelines as they may be revised by Buyer from time to time. Buyer's current Supplier Code of Conduct is maintained at <https://americas.kyocera.com/other/supplier-information/supplier-standards-of-business-conduct.html>. Buyer's current Supply Chain Corporate Social Responsibility Procurement Guideline is maintained at https://americas.kyocera.com/other/supplier-information/supply_chain_csr_procurement_guideline.html. Buyer's Sustainability Policies and Guidelines are maintained at <https://global.kyocera.com/sustainability/index.html>.

28. **AVOIDANCE OF COUNTERFEIT GOODS.** In order to mitigate counterfeit parts entering the Supply Chain, Buyer will only accept parts from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM) or through authorized distributors of such. Independent distributors, brokers, or other secondary sources shall not be used for items on this purchase order. It is Seller's responsibility to protect the integrity of this to ensure only authentic parts are provided to Buyer.

29. **EEE PARTS SUPPLY CHAIN TRACEABILITY:** Seller shall maintain a method of item supply chain traceability that ensures tracking of the supply chain back to the manufacturer of all Electrical, Electronic, and Electromechanical (EEE) parts being delivered per this contract. This supply chain traceability method shall clearly identify the name and location of all of the supply chain intermediaries from the manufacturer to the direct source of the product for the Seller and shall include the manufacturer's batch identification for the item(s) such as date codes, lot codes, serializations, or other batch identifications.

30. **EXPORT COMPLIANCE.** Seller expressly acknowledges that the goods and/or related technical information are subject to regulation by agencies of the United States Government including, but not limited to, the U.S. Department of Commerce and U.S. Department of State, which prohibit export or diversion of certain goods and/or technical information to certain countries and third parties. Seller represents and warrants that it will not, directly or indirectly, export, re-export or transship goods and/or technical information in violation of any applicable U.S. export control laws or regulations or the applicable export control laws of any country having jurisdiction over Seller and Buyer or the transactions pursuant to this purchase order. Seller further warrants that it will comply in all respects with the export and re-export restrictions set forth in any export license for the goods and/or technical information shipped to Buyer pursuant to this purchase order. Seller shall take all actions which may be necessary to assure that no third parties contravene such U.S. laws and regulations.

31. **EQUAL OPPORTUNITY.** In performing work under this purchase order, Seller agrees not to discriminate against any employee or applicant for employment because of any factor or aspect involving such person that constitutes a protected class under U.S., California or other applicable employment law, including but not limited to race, creed, color, national origin, sex, or sexual orientation and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies of raw materials.

32. **SHELF LIFE.** Buyer requires a minimum of 80% shelf life remaining for shelf-life controlled items. Any goods shipped with less than 80% must be agreed upon in writing by Buyer before shipment.

33. **DELIVERY GUARANTEE/DELAYS.** Seller acknowledges that time is of the essence with respect to Seller's obligations hereunder and the timely delivery of goods and services, including satisfaction of all performance and delivery dates, timetables, project milestones and other requirements of this purchase order. If Seller at any time believes that a scheduled delivery will be delayed beyond the scheduled delivery date for any reason, including but not limited to a crisis or any other extenuating circumstance, Seller will immediately notify Buyer in writing. Within 3 days, Seller will compile an impact statement for all open orders, including a recovery plan and will provide weekly updates until the issue is resolved. In no event will Seller's satisfaction of its notice obligation and/or compliance with its other obligations provided for in this section operate to excuse any delivery delay or to waive or limit Buyer's rights and remedies relating to any such delay.