

Kurz-Kasch, Inc. Sales - P.O. Terms and Conditions

Kurz-Kasch, Inc. ("Seller") shall only provide products or services to Seller's customer ("Buyer") expressly conditioned upon the acceptance of the following terms and conditions (these "Terms and Conditions") by Buyer:

1. **Quotation.** Quotations are dependent upon market conditions. All quotations by Seller are subject to change or withdrawal without prior notice to Buyer unless otherwise specifically stated in the quotation. If gauges are required, they must be furnished by Buyer and will be quoted separately. Surface finish includes only such finish as can be obtained directly from the molding process and does not include polishing or buffing operation unless otherwise specifically stated in the quotation. A mold set-up charge will be quoted on all orders for parts not carried as proprietary in-stock parts by Seller. Charges will be quoted for any special boxing or packing requirements by Buyer.

2. **Acceptance.** No purchase order shall be binding upon Seller unless and until accepted in writing by Seller or by Seller commencing performance. The terms or conditions of Buyer's purchase order, work order, payment document or other similar instrument shall not be binding on either party and shall not be construed to amend, add to, delete from or supersede any provision of these Terms and Conditions.

3. **Prices.** Prices are in U.S. Dollars and are subject to change without notice. All orders are accepted upon condition that prices at time of delivery are subject to change as may be required to compensate for increase in labor, material and other costs.

4. **Terms of Payment.** Production and prototype tool payment terms are: 33% due with tool purchase order; 33% due upon tool completion; and balance due within 30 days of receipt of samples. Full production of the products shall begin only after all such production and prototype tool payments are paid in full and samples are approved in writing by Buyer. Unless otherwise specifically agreed to by Seller in writing, all other terms of payment are 30 days net from the date of Seller's invoice. Any inspection rights granted to Buyer will not affect or alter the payment terms or the timing of Buyer's payment obligations. Under no circumstances will Buyer have a right of set-off. Seller shall have the right to offset its payables against its receivables related to products or services purchased by Buyer and Buyer's affiliates. Any payment (whether disputed or undisputed) that is past due to Seller shall bear interest on the unpaid amount at the rate of 1.5% per month or the highest rate allowed by law (whichever is lower), prorated on a daily basis during the period in which it remains unpaid. If Buyer fails to make any payment as required, Buyer agrees to indemnify Seller for all costs and expenses, including reasonable attorneys' fees, court costs and associated expenses incurred by Seller to collect such payment.

5. **Credit Approval.** All shipments shall be subject to the approval of Seller's credit department. Seller may invoice Buyer and recover for each shipment as a separate transaction or if, in Seller's sole judgment, the financial responsibility of Buyer is or becomes unsatisfactory, then Seller may, at its option and without prejudice to any of its other remedies, (a) defer or decline to make any shipments except upon receipt of satisfactory security or cash payments in advance, (b) terminate all orders of Buyer, or (c) declare all outstanding invoices immediately due and payable.

6. **Changing Orders.** Seller reserves the right to cancel any orders upon at least 30 days' prior written notice. Once Seller has either accepted an order or has begun performance with respect to such order, such order cannot be canceled, terminated or modified by Buyer except with Seller's written consent.

7. **Shipment.** All Products shall be shipped FCA (Incoterms 2000) Seller's facilities and shall become the property of Buyer upon delivery to the carrier and receipt of full payment by Seller. Buyer shall assume all risk and liability for loss, damage or destruction, as well as the results of any use or misuse by third parties who may acquire or use the products improperly after the delivery to the carrier. Seller assumes no responsibility for insuring shipments unless specifically agreed to in writing by Seller and in which case the cost of insurance shall be for Buyer's account. Unless mutually agreed upon, shipping dates are approximate and are based upon prompt receipt of all necessary information. Seller reserves the right to ship items in a single or multiple shipments. A variance in quantity not to exceed 10% shall constitute the fulfillment of an order as to quantity. Invoicing will be adjusted to reflect the actual quantity shipped. If exact quantities are required, Seller must furnish a special quotation upon request by Buyer.

8. **Inspection.** Seller grants Buyer the right to inspect products for a period of 15 days immediately following receipt ("Inspection Period"). Any loss occasioned by damage or shrinkage in transit will be for Buyer's account and claims for such loss shall be made solely against the carrier. Buyer must notify Seller of any products that do not conform to the terms applicable to their sale within the Inspection Period, and afford Seller a reasonable opportunity to inspect such products and cure any nonconformity. If Buyer fails to provide Seller with notice of nonconformity within the Inspection Period, Buyer shall be deemed to have accepted the products. Buyer will have no right to return any products without Seller's prior written authorization. Any return authorized by Seller must be made in accordance with Seller's then-current return policies and must be accompanied by a Returned Goods Authorization ("RGA") from Seller. Buyer will be responsible for all costs and expenses associated with any returns of products and will bear the risk of loss or damage of such products. Seller may (in its sole discretion) reject any return of products not approved by Seller in accordance with these Terms and Conditions or otherwise not returned in accordance with Seller's then-current return policies.

9. **Warranties.** SELLER MAKES ONLY THE FOLLOWING WARRANTIES TO BUYER (which Buyer may extend to only its first customer of such products).

Seller warrants that each product shall be free from defects in material or workmanship at time of delivery to the carrier and each product shall perform in accordance with its written specifications (if any) for 6 months from the date of such delivery. These warranties shall not extend to any product which upon examination by Seller is found to have been subjected to (a) mishandling, misuse, tampering, negligence or accident, (b) installation, operation or maintenance which either was not in accordance with Seller's instructions or was otherwise improper, or (c) repair or alteration by anyone other than Seller. Should any failure to conform to these warranties be discovered and brought to Seller's attention within 6 months from the date such product is delivered to the carrier ("Warranty Period") and be substantiated by examination by Seller, then Seller shall correct (at its own cost) such failure (at its sole option) by (y) repair or replacement of the non-conforming portion of such product, or (z) by return of the purchase price. Buyer agrees that this remedy shall be its sole and exclusive remedy against Seller and that no other remedy shall be available.

SELLER SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INVESTIGATE ALL CLAIMS AND NO PRODUCTS SHALL BE RETURNED TO SELLER UNTIL AFTER INSPECTION AND APPROVAL BY SELLER AND RECEIPT BY BUYER OF AN RGA.

PRODUCTS REPLACED OR REPAIRED BY SELLER IN AN EFFORT TO FULFILL ITS WARRANTY OBLIGATIONS HEREUNDER SHALL CARRY ONLY THE REMAINING UNEXPIRED WARRANTIES OF THE PRODUCTS ORIGINALLY DELIVERED AND ONLY FOR THE REMAINING WARRANTY PERIOD OF THE PRODUCTS ORIGINALLY DELIVERED.

THE SERVICE PROVIDED HEREUNDER ARE PROVIDED "AS IS". UNLESS OTHERWISE AGREED UPON IN WRITING BY THE PARTIES, IT IS BUYER'S RESPONSIBILITY TO ENSURE THAT THE PRODUCTS ARE PROPERLY DESIGNED, THAT RELEVANT SAFETY REGULATIONS ARE OBSERVED, THAT RELEVANT MATERIALS AND TEST PROCEDURES ARE PROPERLY SELECTED AND THAT SPECIFICATIONS ARE FREE FROM ERRORS AND OMISSIONS. SELLER IS NOT RESPONSIBLE FOR THE DESIGN OF ANY PRODUCTS. BUYER REPRESENTS THAT IT IS A SOPHISTICATED BUSINESS ENTITY CAPABLE OF EVALUATING THE DESIGN OF THE PRODUCTS. ACCEPTANCE OF ANY PRODUCTS CONSTITUTES ACCEPTANCE OF THE DESIGN OF THOSE PRODUCTS AND A WAIVER OF ALL CLAIMS RESULTING FROM THE DESIGN OF THOSE PRODUCTS.

THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER IS SOLELY RESPONSIBLE FOR DETERMINING WHETHER ANY PRODUCT IS FIT FOR A PARTICULAR PURPOSE AND SUITABLE FOR BUYER'S INTENDED USE OR CUSTOMER. ACCORDINGLY, AND DUE TO THE NATURE AND MANNER OF USE OF THE PRODUCTS, SELLER IS NOT RESPONSIBLE FOR THE RESULTS OR CONSEQUENCES OF USE, MISUSE OR APPLICATION OF THE PRODUCTS BY ANYONE. NO SAMPLE OR MODEL HAS BEEN MADE PART OF THE BASIS OF THE BARGAIN OR HAS CREATED OR AMOUNTED TO ANY EXPRESS WARRANTY THAT THE PRODUCTS WOULD CONFORM TO ANY SAMPLE OR MODEL.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THESE TERMS AND CONDITIONS.

10. Limitation of Liability. SELLER SHALL NOT BE LIABLE, AND BUYER WAIVES ALL CLAIMS AGAINST SELLER, FOR INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. SELLER WILL NOT BE LIABLE TO BUYER FOR ANY LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE OR USE OF THE PRODUCTS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER GOODS OR OTHERWISE. IN NO EVENT WILL SELLER'S LIABILITY UNDER THESE TERMS AND CONDITIONS OR IN CONNECTION WITH THE PRODUCTS OR SERVICES PROVIDED BY SELLER EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THESE TERMS AND CONDITIONS.

11. Components. Components and other raw materials obtained by Seller from third party suppliers and used in the products are not warranted by Seller. If the components or raw materials carry a warranty from the third party supplier, Seller may extend same to Buyer if authorized by such third party supplier. Components and other raw materials supplied by Buyer shall be delivered to Seller's facilities, all charges prepaid, and the quantity delivered shall not exceed by 10% the number required to complete the order. If gauges are required, they must be furnished by Buyer and will be quoted separately.

12. Buyer's Confidential Information. If any information that Buyer discloses to Seller in connection with these Terms and Conditions is considered confidential or proprietary by Buyer, prior to disclosure of such information to Seller, Buyer shall conspicuously notify Seller of that fact, and Seller shall thereafter take reasonable precautions to protect Buyer's interest therein. Such precautions shall be conclusively presumed adequate and acceptable to Buyer unless Buyer shall request a written particularization of Seller's intended precautions and objects to their adequacy prior to making disclosure of the information sought to be protected. Such particularized precautions, if taken as furnished in writing to Buyer, shall be conclusively presumed adequate.

13. Seller's Intellectual Property. All designs (whether or not patentable), know-how, tooling (including tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and manufacturing aids and replacements thereof) used in the manufacture of the products, specifications, formulas, developments, processes, software code, technical information, drawings or other information (collectively, "Intellectual Property") related to the products or services provided to Buyer are the exclusive property of Seller, and all rights, title and interest in and to the Intellectual Property shall remain exclusively in Seller, notwithstanding Seller's disclosure of any thereof to Buyer or Buyer's payment to Seller for engineering or non-recurring charges. Buyer shall not use or disclose any Intellectual Property to any party without prior written consent of Seller. Buyer shall promptly return all Intellectual Property (in whatever form and any copies thereof) to Seller upon written request from Seller. The provisions of this section shall survive the termination of these Terms and Conditions. Seller is not responsible for keeping any Intellectual Property from which products have not been produced for a period of 3 years or in any event beyond reasonable normal life of such Intellectual Property. Wear and tear of some of the Intellectual Property resulting from mechanical flow, whether or not affecting dimensions or quality of the molded part is beyond Seller's control. Therefore, Buyer shall be responsible for the costs of repairing or replacing such Intellectual Property and related tooling components (including, mold frames, cores, cavities, sprues, runners, transfer pots, pins, plating or texturing, gates and parting lines).

14. Notice. Any notice, consent or other communication required or permitted hereunder shall be in writing. It shall be deemed given when (a) delivered personally, (b) sent by commercial overnight courier with written verification of receipt, or (c) sent by registered or certified mail, return receipt requested, postage prepaid, and the receipt is returned to the sender. Such communications will be sent to Seller to the attention of its President at 2271 Arbor Blvd., Dayton, Ohio 45439. Such communications will be sent to Buyer to the attention of its President at its billing address.

15. Force Majeure. Seller shall not be liable by reason of any failure or delay in the performance of its obligations due to strikes, shortages, riots, insurrections, terrorism, fires, floods, storms, earthquakes, explosions, acts of God, war, governmental action, labor conditions, or any other cause which is beyond its reasonable control.

16. Remedies. Except as specifically provided herein, the remedies provided to the parties under these Terms and Conditions shall be cumulative and non-exclusive, and the parties shall be entitled to seek any other rights to which they may be entitled at law or in equity, subject to the terms of these Terms and Conditions.

17. Entire Agreement. These Terms and Conditions constitute the terms and conditions to the contract of sale and purchase between Seller and Buyer with respect to the products or services provided by Seller, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. Any modifications, revisions, amendments or addition to these Terms and Conditions must be set forth in writing signed by authorized representatives of both parties. These Terms and Conditions shall not be supplemented or modified by any course of dealing or trade usage. No failure of Seller to insist upon strict compliance by Buyer with these Terms and Conditions or to exercise any right accruing from any default of Buyer shall impair Seller's rights in case Buyer's default continues or in case of any subsequent default by Buyer. If any provision herein shall be held to be unlawful or unenforceable, the remaining provisions herein shall remain in full force and effect.

18. Dispute Resolution Process. These Terms and Conditions shall be governed by and construed under the laws the State of Ohio, without regards to its conflicts of law principles, including the Ohio's Uniform Commercial Code – Article 2 Sales and other Ohio laws, but not the United Nations Convention on Contracts for the International Sale of Goods. All claims, demands, controversies, differences and other disputes that may arise between Buyer and Seller regarding any aspect of these Terms and Conditions or the products or services provided by Seller to Buyer shall be determined solely and exclusively by binding arbitration. Each party hereby specifically waives their right to trial by judge or jury and agrees that all disputes shall be submitted to arbitration. If a dispute is submitted to arbitration, the arbitration shall be conducted in English by the American Arbitration Association ("AAA") under the commercial rules then in effect for AAA except as provided herein. The arbitration shall occur in Dayton, Ohio. The award rendered by the arbitrators shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses, and judgment on such award may be entered in any court having jurisdiction thereof. The parties shall be entitled to discovery in connection with the arbitration. Notwithstanding anything in this section to the contrary, either party may apply to the appropriate state or federal court of Montgomery County, Ohio for a temporary restraining order or preliminary injunction at any time. Each party expressly consents to the jurisdiction of the federal, state and local courts serving Montgomery County, Ohio. The denial of any application for a temporary restraining order or preliminary injunction shall not preclude a party from thereafter seeking a temporary restraining order or preliminary injunction from the arbitrators, nor shall the granting of a temporary restraining order or preliminary injunction preclude a party from thereafter seeking its dissolution by the arbitrators. Any action by Buyer against Seller shall be commenced within 1 year after the cause of action has accrued.

19. Miscellaneous. Buyer shall pay to Seller, in addition to the invoiced prices, the amount of all fees, duties, licenses, tariffs and all sales, use, privilege, occupation, excise or other taxes, federal, state, local or foreign, which Seller is required to pay or collect in connection with the products or services provided to Buyer. Failure by Seller to collect any such fees or taxes shall not affect Buyer's obligations hereunder and Buyer shall fully defend, indemnify and hold harmless Seller with respect to such tax obligations. Buyer may not, directly or indirectly, use or refer to Seller (or its Intellectual Property or the products or services provided by Seller) in Buyer's product literature or marketing campaigns without prior written consent from Seller. Seller may engage subcontractors to provide certain of the products or services, but shall remain fully responsible for such performance. Neither party may otherwise assign or transfer these Terms and Conditions or assign or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party, such consent not to be unreasonably withheld. "Including" means "including without limitation" and does not limit the preceding words or terms. The words "or" and "nor" are inclusive and include "and". Whenever the context shall require, each term stated in either the singular or plural shall include the singular and the plural. The headings or titles preceding the text of the Sections are inserted solely for convenience of reference, and shall not constitute a part of these Terms and Conditions, nor shall they affect the meaning, construction or effect of these Terms and Conditions. The provisions of this section shall survive the termination of these Terms and Conditions.