

## **KAMAYA, INC. – GENERAL TERMS AND CONDITIONS**

**1. GENERAL.** The sale by Kamaya, Inc. (“**Seller**”) of all goods (the “**Product**”) is subject to the terms set forth below (the “**Contract**”). The terms and conditions of this Contract are deemed accepted and agreed to upon ordering the Product, and shall not be superseded by any other terms or conditions in the purchase order or other documents of the purchaser of the Product (“**Buyer**”). This Contract merges and supersedes all prior negotiations or agreements of the parties, either written or oral, made either prior to or contemporaneous with this Contract. This Contract cannot be modified or amended except by a subsequent written instrument executed by the parties which expressly mentions and supersedes the provisions of this Contract. This Contract, together with any attachments, constitutes the complete, exclusive and final agreement between Buyer and Seller. Any additional or different terms provided by Buyer in prior or subsequent purchase orders or other documents shall not be binding. The rights and obligations under Sections 7 through 22 will survive the cancellation, termination or expiration of this Contract.

**2. DELIVERIES.** Buyer shall give Seller electronic or written prior notice of the desired timing of deliveries. Seller shall be under no obligation to fill any order submitted by Buyer. Every order shall be deemed Buyer’s offer to enter into an agreement pursuant to the terms of this contract. Seller shall only be obliged to meet agreed deadlines for deliveries if such deadlines are expressly agreed upon in writing, if all specifications in connection with such deliveries are received from Buyer in a timely manner, and if Buyer complies with all other agreed terms and conditions (including the respective payment obligations). In the event Buyer fails to do so, the delivery period shall be appropriately extended.

**3. PRICE.** The price shall be the prices shown in Seller's pricelist, as amended from time to time, unless otherwise agreed in writing between the parties. All prices quoted are subject to change, without notice, at any time prior to Seller's shipment of Buyer's order, to such prices prevailing at the time of shipment. This provision shall not apply to fixed price contracts specifically waiving this provision. Prices on fixed price contracts which are found to be quoted in error (mis-quoted) are subject to price correction. In the event a buyer places a Purchase Order for parts found to be quoted in error prior to delivery, seller reserves the right to re-negotiate the Purchase Order price or seller / buyer can cancel the order.

**4. TERMS OF PAYMENT.** The price for the Product is due and payable as set forth in Seller's proposal, price list, catalog, website, or Invoice, whichever date is most recent. If the payment by Buyer is not received by such due date, Buyer shall be deemed to be in default without requirement of any further notice by Seller and all invoices shall be considered past due. Past due payments will be subject to a service charge of one and one-half percent (1½%) per month. Any right of retention or offset of Buyer shall be excluded.

**5. TITLE / CREDIT.** Title to the Product shall remain with Seller until receipt by Seller of all amounts due from Buyer. If Buyer fails to pay any invoice in accordance with the terms of this Contract, or is past due in payment of any other amount owing to Seller, Seller may, at its option (and without liability and without prejudice to any other remedies) take all legal actions to recover all payments owing to Seller by Buyer, stop any Product in transit, and/or decline further performance of this Contract or any other agreement between Buyer and Seller. If at any time in the judgment of Seller, the financial responsibility of Buyer is impaired, Seller may change the terms of payment and may require advance payment as a condition of shipment.

**6. TRANSPORTATION.** Unless otherwise expressly agreed in another writing, transportation terms shall be as provided in this Section. All costs and risks of shipment and delivery are by Buyer. Seller shall have the right to select the manner of packaging and means of transportation. Buyer bears the risk of loss or deterioration of the Product during the shipment. Any expenses of the carrier selected by Seller shall be borne by Buyer and may be invoiced separately by Seller. If freight or other transportation costs are increased, Seller may add any such increase to the Contract price without prior notice thereof to Buyer. Seller shall not be responsible for any claims or damages resulting from a delay in delivery or failure to perform. Buyer shall be responsible for asserting claims for losses or damages in transit directly against the carrier.

**7. WARRANTIES; LIMITATION OF LIABILITY; REMEDIES; DAMAGES.**

SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY THAT THE PRODUCT SOLD HEREUNDER IS NON-INFRINGEMENT, IS OF MERCHANTABILITY QUALITY, OR THAT THE PRODUCT SHALL BE FIT FOR ANY PARTICULAR PURPOSE. THERE ARE NO WARRANTIES IMPLIED BY OPERATION OF LAW OR OTHERWISE. SELLER SHALL NOT BE LIABLE TO BUYER OR ANYONE ELSE FOR ANY SPECIAL, INDIRECT, ECONOMIC, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) ARISING OUT OF OR IN CONNECTION WITH THE PRODUCT, THIS CONTRACT, OR ANY BREACH THEREOF. BUYER'S CLAIM AND SELLER'S LIABILITY SHALL BE LIMITED TO THE CONTRACT PRICE.

**8. ALL SALES FINAL.** ALL SALES ARE FINAL AND BUYER SHALL HAVE NO RIGHT TO RETURN ANY NON-DEFECTIVE PRODUCT. ANY PRODUCT SUPPLIED BY SELLER HEREUNDER TO REPLACE PRODUCT SHALL BE DEEMED SUPPLIED TO BUYER

SUBJECT TO ALL OF THE TERMS AND CONDITIONS OF THIS CONTRACT, INCLUDING, WITHOUT LIMITATION, THOSE CONCERNING WARRANTIES, LIABILITY, REMEDIES AND DAMAGES ON THE PART OF SELLER, TO THE SAME EXTENT AS THE PRODUCT. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR ADEQUACY OF ANY INFORMATION FURNISHED TO BUYER CONCERNING THE PRODUCT. SELLER SHALL NOT BE LIABLE FOR ANY ERROR OR OMISSION IN THE PREPARATION OR PROVISION OF SUCH INFORMATION.

**9. BUYER'S HANDLING OF PRODUCT.** Buyer assumes all risks and liability, and Seller assumes no risk and no liability, with respect to unloading and discharge of the Product (including failure of discharge or unloading implements or material used by Buyer, whether or not supplied by Seller), storage, handling, sales and use of the Product, and the compliance or noncompliance with all federal and local laws and regulations with respect thereto.

**10. INFRINGEMENT.** Buyer assumes all risk of patent infringement by reason of any use Buyer makes of the Product in combination with other material or in the operation of any process. Seller retains ownership of all intellectual property.

**11. CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by

Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section.

**12. INDEMNITY.** Buyer shall defend, indemnify and hold Seller harmless from and against all damages, causes of action (including attorneys' fees), claims, losses, liabilities, penalties, personal injuries (including death), environmental damages and tangible property damage caused by Buyer's negligence, strict liability, breach of warranty, breach of this Contract, fault, omissions or willful conduct arising, without limitation, from the handling, transportation, modification, storage and use of the Products.

**13. TAXES.** All payments under this Contract are exclusive of all applicable taxes and governmental charges (such as tariffs or duties), all of which shall be paid by Buyer regardless of which party such taxes are imposed upon (with the exception of any taxes computed with regard to Seller's income). In the event Buyer is required by law to withhold taxes, Buyer agrees to furnish Seller all required receipts and documentation substantiating such payment. If Seller is required by law to remit any tax or governmental charge on behalf of or for the account of Buyer, Buyer agrees to reimburse Seller within fifteen (15) days after Seller notifies Buyer in writing of such remittance. Buyer agrees to provide Seller with valid tax exemption certificates in advance of any remittance otherwise required to be made by Seller on behalf of or for the account of Buyer, where such certificates are applicable.

**14. TITLE.** The Product delivered hereunder remains Seller's property until fulfilment of all terms and conditions set forth herein, including receipt of all payments. During the period of retention of title, Buyer shall not be allowed to assign the Products or use them as security. If the Buyer sells the Product to any third party, all rights of Buyer against such assignee – including any

receivables – are hereby assigned to Seller as security without the need for any separate declaration to this effect. Until revoked, Buyer shall be authorized to collect the assigned receivables relating to the resale of the Product. Seller may revoke this authorization without cause. Furthermore, Seller may demand that Buyer provide Seller with the information and documents required for the assertion of Seller's rights against Buyer's customers.

**15. LIMITATION OF ACTIONS.** Notwithstanding anything in this Contract to the contrary, any action for Seller's breach of this Contract must be commenced by Buyer within six (6) months after the cause of action accrues, and no such action may be maintained which is not commenced within such period.

**16. FORCE MAJEURE.** Neither party shall be liable for its failure to perform hereunder if due to any event beyond the reasonable control of the party affected, including but not limited to acts of God, war, fire, bad weather, flood, accident, labor trouble or shortage, terrorism, civil disturbance, plant shutdown, equipment failure, voluntary or involuntary compliance with any applicable governmental regulation or order, or shortage or inability to obtain (on terms deemed reasonable by the party affected) any raw material (including energy), equipment or transportation, which materially impairs such party's ability to so perform. Any quantities not delivered or accepted because of any such event shall be eliminated from the Contract without liability. Seller shall not be obligated to deliver the Product from other than the production or shipping points designated herein and shall not be obligated to rebuild or repair any damage or destruction to such production or shipping points in order to fulfill this Contract. Seller shall also not be obligated to obtain any raw materials or Product from sources other than its usual sources. During any period when Seller is unable to supply the Contract quantity of the Product, whether caused by the circumstances above or otherwise, Seller may allocate any available Product, among its customers,

including its own subsidiaries, divisions and departments, on such basis as Seller deems fair and reasonable, and its failure, partial or otherwise, to make deliveries to Buyer shall not be a breach of this Contract.

**17. TERMINATION OF CONTRACT.** Should Seller for any reason elect to suspend manufacture of any Product which is the subject of this Contract, or curtail production or sale of the Product in consequence of the application of any governmental regulation or order which will, in the reasonable judgment of Seller, render the production, marketing or transportation of the Product economically, technically or commercially impracticable, Seller may terminate this Contract upon thirty (30) days prior written notice to Buyer.

**18. ASSIGNMENT.** This Contract and the rights and obligations of Buyer hereunder shall not be assignable by Buyer, either by act of Buyer or by operation of law without the prior written consent of Seller, and shall not be deemed an asset of Buyer in, and at the option of Seller shall terminate in the event of, the commencement of any case or proceeding in respect of Buyer under any bankruptcy, insolvency or similar law or any assignment for the benefit of creditors. At the option of Seller, this Contract shall terminate in the event of the insolvency of Buyer. Any purported assignment of this Contract without the prior consent of Seller shall be null and void.

**19. GOVERNING LAW AND FORUM SELECTION.** This Contract is made under and shall be governed by, construed in conformance with, and all disputes shall be governed by the internal laws (exclusive of the conflicts of law principles) of the State of Indiana without regards to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (CIGS) shall not apply. All disputes, claims demands, liabilities and causes of action related to this Contract which are not resolved in a state or federal court located in Fort Wayne,

Allen County, Indiana, unless Seller waives this provision and commences an action in another venue.

**20. SEVERABILITY.** If any provision of this Contract shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Contract. The entire Contract shall be construed as if not containing the particular invalid or unenforceable provision and the rights and obligations of each party shall be construed and enforced accordingly.

**21. NON-WAIVER.** Seller's waiver of any breach or failure to enforce any of the terms or conditions of this Contract at any time shall not in any way affect, limit or waive its right thereafter to enforce strict compliance with every term and condition hereof.

**22. OFAC LISTS.** None of Buyer or any of its officers, directors or employees is on any list of prohibited countries, individuals, organizations or entities that is administered or maintained by the U.S. Office of Foreign Assets Control ("**OFAC**"), including but not limited to the List of Specially Designated Nationals and Blocked Persons, or on any similar list not maintained by the OFAC. Buyer has and will maintain a process to ensure compliance with this Section 24.