



# KEPNER

PRODUCTS COMPANY

## Standard Terms and Conditions of Sale

**ACCEPTANCE.** This writing is not an acceptance of any offer made by Buyer. All orders are subject to acceptance by Kepner Products Company (Seller) and shall be governed exclusively by the terms and conditions stated herein. Any terms and conditions in addition to, or inconsistent with those stated herein are hereby objected to by Seller. No such additional, different or inconsistent terms and conditions shall become part of the contract between Buyer and Seller unless expressly accepted in writing by the President of Seller. Seller's acceptance of any offer to purchase by Buyer is expressly conditional upon Buyer's assent to all the terms and conditions stated herein. No representative of Seller has the authority to waive, alter or add to these standard terms.

**PRICE.** All catalog or quoted prices and discounts are for your prompt acceptance and are subject to change without notice. Minimum order requirements apply. Each product on an order earns its own discount. However, multiple shipments of identical product scheduled to be completed within 90 days may be combined on one order for best quantity price. Prices do not include tax. Shorthand and clerical errors are subject to correction.

**TAXES.** Buyer shall reimburse Seller for all taxes, excises or other charges that Seller may be required to pay to any government upon the sale hereunder unless Buyer furnishes to Seller adequate proof of exemption from such taxes. Buyer shall also assume and pay any applicable import/export duties.

**PAYMENT.** Unless otherwise stated or agreed upon, payment in U.S. currency shall be made by Buyer thirty (30) days from the date of invoice.

**CREDIT APPROVAL.** Deliveries and performance of work shall at all times be subject to the credit approval of Seller, and Seller may at any time decline to make delivery or perform work, except upon receipt of payment or security arrangements satisfactory to Seller. Whenever Seller in good faith has reason to question Buyer's ability or intent to perform, Seller may demand in writing adequate assurance from Buyer of Buyer's ability or intent to perform, and may suspend performance hereunder pending such assurance. In the event that such a demand is made and such assurance is not given within a reasonable time, Seller may treat that failure as an anticipatory repudiation hereof and exercise any appropriate remedy therefor.

**DELIVERY.** Unless otherwise agreed upon, delivery is made F.O.B. Seller's plant in Villa Park, Illinois. Seller shall deliver product by the method according to Buyer's written instruction. All shipping costs, including freight and insurance costs, shall be borne by the Buyer. Risk of loss shall pass to Buyer upon delivery to a carrier. Delivery dates shown are approximate only and Seller will use reasonable efforts to meet them; however, Seller shall have no liability for any damages or penalties whatsoever related to delay in delivery caused by events beyond Seller's control including, without limitation, acts of God, fire, inclement weather, inability to obtain materials or manufacturing facilities, failure of shipping facilities, defaults of common carriers or Buyer's acts or omissions.

**SHIPMENT CLAIMS.** Any claims by Buyer for omissions or shortages in a shipment shall be waived unless Seller receives notice thereof within ten (10) days after Buyer's receipt of the shipment.

**RETURN POLICY.** Unused product may be returned only if authorized by Seller in writing, and its acceptance will be contingent upon inspection at Seller's plant, with shipment at Buyer's expense. Returns will not be accepted by Seller without an R.G.A. # (Returned Goods Authorization number). Returns are subject to a restocking fee, except those returns of defective product under Warranty or incorrect shipment.

**LIMITED WARRANTY.** Seller warrants that the products sold to Buyer shall be free from defects in material and workmanship for a period of one year after the date of Seller's delivery. If during this period, (i) Seller is notified promptly in writing of the defect, (ii) such product is returned freight PREPAID to Seller along with R.G.A. number and a complete explanation of the defect and circumstances, and (iii) Seller's examination of such product discloses to Seller's satisfaction that such product is defective and such defect is not caused by accident, abuse, misapplication or improper installation, contamination, or any tampering, repair, or alteration performed by anyone other than Seller, then Seller shall at its sole option either repair, replace, or credit the Buyer for such defective product. The forgoing warranty constitutes Seller's

exclusive liability, and the exclusive remedy of the Buyer, for any breach of warranty or other nonconformity of the products covered hereunder. THIS WARRANTY IS EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. No representative of Seller has any authority to change or extend the provisions of this warranty in any manner whatsoever.

**LIMITATION OF LIABILITY.** Seller's liability shall be limited exclusively to repairing or replacing any product found by Seller to be defective, or at Seller's option, to credit Buyer the purchase price of the product. SELLER'S LIABILITY SHALL NOT IN ANY EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCT HEREUNDER AND NO OTHER LIABILITY IS EITHER EXPRESSED OR IMPLIED. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE OF SYSTEM OR EQUIPMENT, COSTS FOR PRODUCT REPLACEMENT, DOWN-TIME COSTS, OR CLAIMS OF BUYER'S CUSTOMER, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, WARRANTY OR ANY OTHER BASIS. Seller and its representatives will furnish, upon request, data and engineering services relating to the application or use of its products. SELLER WILL NOT BE RESPONSIBLE AND DOES NOT ASSUME LIABILITY WHATSOEVER FOR DAMAGES OF ANY KIND SUSTAINED EITHER DIRECTLY OR INDIRECTLY BY ANY PERSON IN THE ADAPTION OR USE OF SUCH DATA OR ENGINEERING SERVICES IN WHOLE OR IN PART. No representative of Seller has any authority to change or extend the provisions of this limitation of liability in any manner whatsoever.

**CHANGES AND CANCELLATIONS.** Acceptance of Buyer's request to modify or cancel the sale order shall be at Seller's discretion, and shall be upon such terms and conditions as Seller may require to cover incurred costs and to compensate for earned quantity discount prices.

**PRODUCT WARNING.** Due to the wide variety of operating conditions and applications for Seller's products, the Buyer, through its own evaluation, is solely responsible for final selection of product and assuring that all performance and safety requirements of the specific application (including physical and chemical compatibility) are met.

**LIMITATION OF APPLICATION.** Seller's products are intended for industrial use only. Unless otherwise authorized in writing by an officer of Seller, Seller's products shall not be used in any nuclear facility or activity, aircraft/aerospace, life support, or in such other life critical applications as may require extraordinary process control or where failure of product could cause substantial harm or damage.

**COMPLIANCE WITH LAWS.** Seller shall comply with the Fair Labor Standards Act of 1938 and the Equal Employment Opportunity law, as applicable and amended from time to time.

**SECURITY INTEREST.** Buyer hereby grants to Seller a security interest in the goods sold hereunder, until the buyer has completed payment of the purchase price, plus accrued interest, and fully performed all of the other terms and conditions hereof, at which time Seller's security interest is satisfied.

**ENTIRE AGREEMENT/GOVERNING LAW.** The terms and conditions herein, together with any amendments or modifications expressly accepted by Seller in writing, shall constitute the entire agreement concerning the product sold, and there are no oral or other representations or agreements which pertain thereto. If any provisions of these terms and conditions of sale shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provision hereof, which shall be construed as if such illegal and unenforceable provision(s) had not been inserted herein. The failure of either Seller at any time or times to enforce any provision of this Agreement shall in no way be construed as a waiver of such provision and shall not affect the right of Seller at a later time to enforce each and every such provision. This Agreement shall be governed by the law of the State of Illinois. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.