

K-FLEX USA TERMS, CONDITIONS & WARRANTY

These are the Terms and Conditions of sale for K-FLEX USA L.L.C. and each of its divisions (Seller). There are no other terms of sale unless Seller agrees in writing to different terms with you, the “Purchaser” of Seller’s products:

1. ACCEPTANCE OF ORDERS

Seller’s offer to sell products to Purchaser or acceptance of Purchaser’s order is expressly conditioned upon Purchaser’s acceptance of these Terms and Conditions (Terms). Purchaser’s acceptance, use or holding of Seller’s products for 10 days after shipment also establishes Purchaser’s acceptance of these Terms. Seller expressly rejects and objects to all new, different or additional terms of sale submitted by Purchaser. Seller also reserves the right to select its own customers and the right to reject any order. Affidavits or certificates of compliance must be requested when orders are placed.

2. PRICES

All prices are subject to change without notice. Unless otherwise specified, orders will be shipped and invoiced at the price in effect at the time of shipment, and price adjustments for products in transit or in Purchaser’s inventory will not be allowed. Any tax or other charge on the production, sale or shipment of the products imposed by federal, state or local governmental authorities will be added to the price to be paid by Purchaser. All listed prices are in US dollars.

3. TERMS OF PAYMENT

Subject to the approval of Seller’s credit department, terms of payment are those in effect for product sales as of the date of shipment. Purchaser is also responsible for amounts due under No. 11 below. Payment Terms are Net 30.

4. DELIVERY

All product sales are F.O.B. Seller’s place of shipment. Seller will use commercially reasonable efforts to ship all products in accordance with published lead times set forth on Seller’s current price list but shall have no liability for delivery delays. Seller shall have no liability for damage or delivery failures occurring after the product is delivered to the carrier. Purchaser is solely liable for demurrage charges assessed at the destination. Product shortages and visibly damaged or defective products must be reported to Seller within 10 days of delivery. Purchaser may not withhold payment on uncontested product deliveries.

5. TITLE AND RISK OF LOSS; SECURITY INTEREST

Title to and all risk of loss or damage to the products vests in Purchaser at the time Seller delivers the products to the carrier regardless of any shipping and insurance arrangements made by Seller on Purchaser’s behalf. However, Seller reserves, until full payment is received, a purchase money security interest in each product delivered.

6. RETURNS

Product returns will be accepted only after Purchaser receives Seller’s prior written approval as follows: (a) For returns authorized due to Purchaser’s rightful rejection or justifiable revocation of acceptance of the products, Seller will pay for reasonable commercial charges for the product return and, in addition, will, at Seller’s option, refund or credit the full purchase price upon return of the products. No request for returns based on damaged or defective products will be approved unless received within the time periods set forth in No. 4 and No. 7; (b) Where Seller determines, in its sole discretion, to accept returns for the convenience of Purchaser, the products are to be returned to the point of shipment, at Purchaser’s expense, properly packed. Seller will issue a credit for the quantity of product received at Seller’s shipping point in resalable condition, as determined by Seller in its reasonable discretion, less: (i) 20% of the original purchase price for handling and reconditioning; or, if greater, (ii) the actual charges incurred.

7. LIMITED WARRANTY; SPECIFICATIONS

All products sold are subject to the following limited warranty: Seller warrants, for a period of one (1) year from the date of shipment or 90 days from the date of original installation, whichever is the shorter period of time, that:

- the product at the time of delivery is free from defects in material and workmanship and manufactured in all material respects to Seller's current written product specifications on the shipment date (General Warranty), and
- the performance of the product with respect to water vapor permeability and thermal conductivity will conform to Seller's current written product specifications on the shipment date (Performance Warranty).

Note: Seller's products may vary in details of design and construction from descriptions in any literature or from any sample, display or other model inspected by Purchaser.

The above Performance Warranty will be void if the product is not installed, used and maintained in accordance with Seller's then current product installation and maintenance instructions and recommendations (including gluing of seams, taping of exposed edges, appropriate protection in outdoor and other harsh conditions, and minimum thickness required for the intended product performance), and all other written instructions and technical specifications data sheet of Seller. Any installation instructions not clearly defined in Seller written product instructions are addressed by Seller's recommendation to abide by ASTM C1710, *Installation Guide for Flexible Closed Cell Foams*, and SMACNA Duct Guidelines. It is the responsibility of the Purchaser of Seller products to 1) provide the product installer with all known installation instructions and recommendations made by Seller and 2) consult Seller technical support on recommendations for the product installation for applications not referenced in Seller or approved industry written instructions. The above Performance Warranty also will be void if the product is installed using ancillary materials such as adhesives, paints, coatings or tapes that are not approved products as defined by Seller written technical specifications or installation instructions.

All statements, technical information and recommendations concerning products sold or samples provided by Seller are based upon tests believed to be reliable but do not constitute a guarantee or warranty and shall not be construed to enlarge, vary or override in any way this limited warranty. All products are sold and samples of products provided with the understanding that Purchaser, installer, specifier and owner (Owner) of the product installation location (Location) have independently determined the suitability of such products for its purposes.

Seller's obligation under this limited warranty is limited to the provision of new product materials for the repair or replacement, at Seller's sole discretion, of defective product, and is expressly conditioned upon the Owner of the Location allowing an inspection during normal business hours of the Location by Seller and its representatives upon reasonable request. Thus, Seller's only responsibility under this warranty is for the cost of manufacturing and shipping such new product materials to the Location. Seller shall have no responsibility for such new product materials after delivery to the Location or for any labor or other costs associated with the removal, repair, replacement or disposal of any defective product materials. Any product repaired or replaced by Seller under this warranty will be subject to the warranty period remaining under the originally installed product.

SELLER DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Purchaser agrees that it will not alter, amend or add to this limited warranty. If Purchaser desires to offer additional warranties or make any representation on its own, such warranties and/or representations will clearly state that they are Purchaser's additional warranties and not those of Seller. Every claim under this limited warranty shall be deemed waived (i) unless in writing and received by Seller within 10 days of delivery if visibly damaged or defective, and otherwise, within 30 days after the defect to which each claim related is discovered, or reasonably could have been discovered, but in no event longer than 1 year after product shipment or 90 days from the date of installation, whichever is the shorter period of time, or (ii) if the defective product has been discarded, destroyed or altered at the Location before inspection by Seller.

8. LIMITATION OF REMEDY

PURCHASER'S EXCLUSIVE REMEDY AND THE LIMIT OF SELLER'S LIABILITY FOR BREACH OF THE LIMITED WARRANTY SET FORTH IN No. 7, WHETHER BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY, SHALL BE, AT SELLER'S OPTION, REPAIR, REPLACEMENT WITH A LIKE QUANTITY OF NONDEFECTIVE PRODUCT OR REFUND OF THE PURCHASE PRICE, PLUS REASONABLE COMMERCIAL SHIPPING CHARGES INCURRED FOR APPROVED RETURNS UNDER No. 6 ABOVE.

9. NO RECOVERY OF CONSEQUENTIAL OR SPECIAL DAMAGES

SELLER SHALL NOT BE LIABLE TO PURCHASER, NOR TO ANY THIRD PARTY CLAIMING THROUGH PURCHASER, FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY, FOR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. ADDITIONALLY, CONSEQUENTIAL AND SPECIAL DAMAGES SHALL NOT BE RECOVERABLE EVEN IF THE REPAIR, REPLACEMENT OR REFUND REMEDY FOR SELLER'S BREACH OF ITS LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE OR FOR ANY OTHER REASON.

10. FORCE MAJEURE

Seller shall not be liable, nor deemed in default hereunder, for any failure or delay in delivering the products or in the performance of its other obligations to Purchaser hereunder, caused by or arising out of: (a) compliance in good faith with any applicable foreign or domestic governmental regulation or order of whatever nature and whether foreign, federal, state or local; (b) all acts of God (such as, but not limited to, floods, fires, hail, or tornadoes); (c) strikes and other labor trouble; (d) delays or nonperformance by suppliers (or other third parties) of raw materials, power or other needed supplies or services; (e) delays or nonperformance by transporting carriers; and/or (f) any other cause, contingency, or circumstance not subject to the reasonable control of Seller affecting the performance of Seller's obligations hereunder. Seller shall determine in good faith the extent to which it can reasonably control a cause, contingency, or circumstance affecting its performance obligations.

11. DEFAULT

In the event of Purchaser's default, Purchaser agrees to pay all costs and expenses, including reasonable attorneys' fees or costs and expenses, incurred by Seller in the event Seller reasonably anticipates a default by Purchaser, whether involving collecting payments due or otherwise enforcing these Terms. Purchaser also agrees to pay Seller simple interest on unpaid amounts from the payment due date at the lesser of 1-1/2% per month or the highest lawful rate.

12. SEVERABILITY

If any of these provisions are determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of these Terms shall be unaffected.

13. ENTIRE AGREEMENT; MODIFICATION; THIRD PARTY BENEFICIARIES

These Terms and the specific order provisions contained on Seller's order set (together, this "Agreement") are the entire contract between the parties with respect to this order. This cancels and supersedes all previous agreements, confirmations, and terms of sale, oral or written. No waiver or modification of these Terms shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller. Additional or different terms submitted by anyone other than Seller are specifically rejected and shall be deemed to be of no effect. In case of any conflict between Seller's order set and these Terms, the provisions of the order set shall control. This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

14. GOVERNING LAW; JURISDICTION

All matters arising out of or relating to this Agreement are to be governed by, and interpreted according to, the internal laws of the State of North Carolina without regard to its choice of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The parties consent to the jurisdiction of the state and federal courts in Raleigh, North Carolina and the effectiveness of service of process by certified United States mail, in any and all disputes, whether in law or equity, arising out of or relating to this Agreement. *Each of the parties hereby waives and agrees not to assert in any such dispute, to the fullest extent permitted by applicable law, any claim that (i) such party is not personally subject to the jurisdiction of such courts, (ii) such party and such party's property is immune from any legal process issued by such courts or (iii) any litigation or other proceeding commenced in such courts is brought in an inconvenient forum.*

15. CONFIDENTIAL PRICING

In no event shall either party disclose the prices of any products ordered pursuant to this Agreement without the prior written consent of the other party.