

KAPSTONE STANDARD TERMS OF SALE

Thank you for your order. Seller's acceptance of your order is expressly made conditional upon Buyer's acceptance of the following Terms of Sale.

- PAYMENT AND FREIGHT TERMS:** All payment and freight payment terms will be set forth on the front of the Invoice. Any amount not paid when due shall at the option of Seller accrue interest at the lower of 18% per annum and the highest rate permitted by applicable law. Payment of accrued interest shall be due Seller upon demand.
- TITLE, RISK OF LOSS, DUTIES:** For export sales, carriage and risk of loss shall be governed by designated INCOTERMS, and title shall generally pass when risk of loss passes, except title shall pass upon arrival at the foreign border for goods delivered INCOTERMS. All duties, taxes (including value added taxes), and other official charges due upon importation are Buyer's responsibility. For all other sales, title to the goods and risk of loss of the goods shall pass to Buyer upon delivery to carrier or to Buyer's vehicle.
- TAXES:** The amount of any sales, excise or other taxes, if any, applicable to the goods shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the taxing authorities. Any taxes which Seller may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the goods, including taxes upon or measured by the receipts of sale thereof, shall be for the account of Buyer, who shall promptly pay the amount thereof to Seller upon demand.
- EXCUSE OF PERFORMANCE:** Except for Buyer's obligation to pay Seller, no liability shall result from delay in performance caused by circumstances beyond the control of the party affected, including but not limited to, act of God, fire, flood, war, government action, accident, labor trouble or shortage, inability to obtain material, equipment or transportation. Quantities so affected may be eliminated from the amount ordered at the discretion of the party affected without liability and Seller may allocate its available supply among its purchasers, including its divisions, but the order shall remain otherwise unaffected.
- FINANCIAL RESPONSIBILITY:** If at any time and for any reason the financial responsibility of Buyer shall become unsatisfactory to Seller in Seller's sole discretion, Seller may require cash or satisfactory security on subsequent shipments or deliveries without impairing the obligation of Buyer to take and pay for the quantity of goods ordered.
- LIABILITY:** Buyer shall examine the goods for nonconformity promptly upon receipt. All claims of whatever nature shall be deemed waived unless all defects ascertainable at the time of giving notice are stated with particularity in writing and received by Seller, promptly upon discovery, and in any event within ninety (90) days of Buyer's receipt of shipment. Any action based in whole or in part on the nonconformity of the goods must be commenced within one (1) year after the cause of action from the date of delivery. Buyer shall not be entitled to set-off any amounts due Buyer against any amount due Seller without Seller's written consent.

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF REVENUE, EVEN IF SELLER IS AWARE OR HAS BEEN ADVISED THAT THE POSSIBILITY OF SUCH DAMAGES OR LOSS MAY EXIST. BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ARISING OUT OF THE SALE OF GOODS TO BUYER, INCLUDING NEGLIGENCE, IS EXPRESSLY LIMITED TO REPLACEMENT OF NONCONFORMING GOODS OR PAYMENT IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE SPECIFIC GOODS FOR WHICH DAMAGES ARE CLAIMED, AT SELLER'S OPTION.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, SELLER'S AGGREGATE LIABILITY TO BUYER FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT ACTUALLY PAID BY BUYER FOR THE GOODS THAT ARE THE SUBJECT MATTER OF BUYER'S CLAIM.

- WARRANTIES:** Seller warrants that goods are of Seller's standard quality, and that Seller can convey title to the goods free of liens and encumbrances. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, SELLER MAKES NO WARRANTY OF ANY KIND WITH RESPECT TO THE GOODS, EITHER EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY ARE EXCLUDED FROM THE TRANSACTION BETWEEN SELLER AND BUYER.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO BUYER, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO BUYER, AND BUYER MAY HAVE ADDITIONAL REMEDIES.

- WAIVER:** The failure of Seller to exercise or enforce any right or provision of these Terms of Sale shall not constitute a waiver of such right or provision in that or any other instance.
- NOTICES, GOVERNING LAW:** This transaction shall be governed by the laws of the State of Illinois, without reference to choice of law rules or to the Convention on Contracts for the International Sale of Goods. All notices required by the Invoice shall be sufficiently given if sent by U.S. mail addressed to the party at the place of business referred to on the front of the Invoice.
- MODIFICATION, MERGER:** These Terms of Sale may only be modified or revised by a writing signed by an officer of Seller. Unless the goods covered by the Invoice are the subject of a written contract between the parties, the Invoice and these Terms of Sale shall constitute the entire agreement between the parties and there are no understandings, agreements or representations, express or implied, not specified herein.
- INVALIDITY:** If any provision of these Terms of Sale shall be deemed unlawful, void or unenforceable, then the provision shall be deemed severable from these Terms of Sale and shall not affect the validity or enforceability of any remaining provisions.
- CONFLICT:** In the event of a conflict between the Terms of Sale and the terms of a written agreement between Seller and Buyer, the terms contained in the written agreement shall control.