



**KRAL-USA, Inc. ("KRAL USA")**  
**VERSION 11/01/2018**  
**TERMS AND CONDITIONS OF SALE**

**1. TERMS OF OFFER** – These Terms and Conditions of Sale ("Terms") apply to the sale of our products ("Products") according to an offer made by KRAL USA to Buyer ("Offer"). Acceptance of this Offer by the Buyer is expressly deemed an acceptance of these Terms and in the event that the purchase order from the Buyer the ("Purchase Order") states terms additional to or different from those set forth herein, these Terms shall be deemed a notice of objection to such additional or different terms and rejection thereof. Any acknowledgment sent by KRAL USA to the Buyer subsequent to KRAL USA's receipt of a Purchase Order from the Buyer ("Order Confirmation") shall incorporate these Terms and not be deemed to be an acceptance by KRAL USA of any terms and conditions provided by Buyer to KRAL USA. Buyer has read and understands these Terms and agrees that KRAL-USA's Order Confirmation or KRAL USA's shipment of any Product or performance of any service shall constitute Buyer's acceptance of these Terms.

**2. DELIVERY** - Unless otherwise stated to the contrary on the Order Confirmation, all Products are sold Ex Works (EXW / Incoterms 2010) Lustenau, Austria (the "Manufacturing Facility"). All Purchase Orders are firm and non-cancelable, subject to these terms and conditions. Buyer shall solely be responsible for all loading, shipping, customs, duties, taxes, import fees or other charges related to the shipment of the Product from the Manufacturing Facility. Risk of loss passes to the Buyer at the moment the specific unit of the Products ("Product Unit") is available for pick-up (the "Delivery Date") at the Manufacturing Facility. Any shipping date ("Estimated Shipping Date") provided by KRAL USA in this Offer/Order Confirmation is only an estimate of the approximate date when the Product Unit will be available for pick-up, not a guarantee of a particular date of delivery, and is based on the prompt receipt of all orders/releases from the Buyer and KRAL USA's suppliers. Any delay in the pick-up or acceptance of Products or performance after the Delivery Date by the Buyer may result in the suspension or postponement of production of Products, additional costs charged to Buyer (such as storage fees), and / or price increases for Products, as determined in the sole discretion of KRAL USA. KRAL USA will use reasonable efforts to fill Purchase Orders promptly on acceptance, but reserves the right to allocate available inventories in its sole discretion. KRAL USA shall not be liable for any failure or delay in providing the Products if such failure or delay is the result of (i) the failure of KRAL USA's suppliers to provide KRAL USA with the Product or required components, (ii) Buyer is not providing information or specifications required for the Purchase Order, (iii) Buyer is not providing components required for the manufacturing of the Product, or (iv) any other factors that are beyond the control of KRAL USA such as labor shortages or troubles, strikes, lockouts, power or material shortages, explosion, operating malfunctions or interruptions, riots, insurrection, commotion, war, terrorist acts, embargo, perils of the sea or air, fire, flood, storm, accident, sabotage or acts of God. Similarly, Buyer shall not be liable for failure to accept shipments of Products ordered by KRAL USA when such failure is due to strikes, riots, insurrection, commotion, war, embargo or acts of God, provided KRAL USA receives notice in writing to suspend such shipments prior to the Delivery Date.

**3. PRICE AND PAYMENT** - The price quoted for any Product Unit shall not include shipping costs, custom duties, fees, import taxes or packaging charges, delivery or insurance charges or other administrative fees and charges, all of which are the sole obligation of the Buyer unless expressly stated otherwise on the face of this Offer/Order Confirmation. The price offered by KRAL USA for any Product Unit does not include sales, use, excise or any similar tax or duty unless expressly stated otherwise on the face of this Offer/Order Confirmation. In addition to the price specified in the Offer, the amount of any present or future sales, use, excise, or any similar tax or duty applicable to the sales of any Product Unit pursuant to this Offer/Order Confirmation shall be paid by Buyer, or in lieu thereof, Buyer shall timely provide KRAL USA with a tax exemption certificate acceptable to the applicable taxing authorities. In addition to the price stated in this Offer/Order Confirmation, Buyer itself shall pay, or shall reimburse KRAL USA for the amount by which the cost to KRAL USA for providing any Product Unit pursuant to this Offer/Order Confirmation is increased by (a) any increase in state, federal, excise or processing taxes, (b) any increase in duty charges that may be imposed by any legislation enacted or effective after the date of this Offer/Order Confirmation, (c) a greater than ten (10%) percent increase in KRAL USA's supplier's cost of labor, materials, supplies and other manufacturing costs. KRAL USA may increase the price for the Products by the amount of such increase in KRAL USA's cost of furnishing such Products pursuant to this Offer/Order Confirmation. All Buyers are required to prepay any Product Unit prior to manufacturing unless this Offer/Order Confirmation states otherwise, in which case payment shall be made net cash within thirty (30) days from the Delivery Date. Seller shall also have the right to request pro rata payments for partial deliveries of Product Units. If Buyer fails to pay any invoice when due, or if the financial condition or credit of Buyer becomes unsatisfactory to KRAL USA, KRAL USA, at KRAL USA's option, and without affecting any other lawful remedy, may demand immediate payment of the entire account balance, may

change the terms of payment, or suspend work on any Product Unit or further delivery, or both, until Buyer provides security or other assurances of performance as required by KRAL USA in its sole discretion within ten (10) days of KRAL USA's request. Buyer acknowledges and agrees that it shall have no right to offset or reduce any payment to KRAL USA by (i) any damages or expenses of Buyer (whether or not caused by the acts or omissions of KRAL USA or KRAL USA's suppliers or agents), (ii) any disputed amounts or payments, or (iii) by any claims or charges against KRAL USA.

**4. INSOLVENCY** - KRAL USA may immediately cancel any Order Confirmation, instruct its supplier to cease work on any Product Unit or modify this Offer/Order Confirmation or any of the payment terms hereof, without liability to Buyer in the event of the happening of any of the following or any comparable events: (a) upon insolvency of the Buyer; (b) upon the filing of a voluntary or involuntary petition in bankruptcy court by or against the Buyer; (c) the appointment of a receiver or trustee for the Buyer; (d) any assignment for the benefit of KRAL USA of the Buyer; or (e) if the financial condition of the Buyer at any time does not, in the judgment of the KRAL USA, justify continuance of work to be performed by KRAL USA and its supplier hereunder.

**5. RISK OF LOSS** - All risk of loss, damage or destruction of a Product Unit after it has been made available for pick-up at the Manufacturing Facility shall be borne by Buyer, and any such loss, damage or destruction shall not release Buyer from any obligation under these Terms and the Order Confirmation.

**6. TITLE TO PRODUCTS** - Title to any Product Unit sold will remain vested in KRAL USA or its affiliate, as the case may be, until payment in full is received by KRAL USA. In the event of Buyer's default in payment in full or any other breach of these Terms and the Order Confirmation, KRAL USA or its representative may enter Buyer's premises and may dismantle, repossess and remove any Product Unit sold hereunder. Buyer hereby knowingly and voluntarily releases KRAL USA from any and all liability for actions taken pursuant to this paragraph. All rights of KRAL USA provided by this paragraph shall be in addition to any legal rights and remedies of KRAL USA, all of which are cumulative. Buyer represents and warrants that it shall not subject any Product Unit to a security interest or lien in favor of any third party unless payment in full for such Product Unit was received by KRAL USA.

**7. INDEMNIFICATION** – To the extent permitted by applicable law, Buyer assumes all risk and liability for loss, damage or injury to third persons or property arising out of the use or possession of the Products sold by KRAL USA to Buyer, and Buyer agrees to protect, defend and hold KRAL USA and its affiliates harmless from and against any and all such claims. Buyer shall also protect, defend, indemnify and hold KRAL USA and its affiliates harmless from and against all liability or obligation, whether in contract, tort (including, but not limited to, negligence and strict liability) or otherwise, with respect to any expense, loss or damage to Buyer or any other party, including KRAL USA, resulting from Products subjected to (a) improper installation, storage or use; (b) accident, damage, abuse or misuse; (c) abnormal operating conditions or applications; (d) operating conditions or applications above the rated capacity of the Products; (e) operating conditions or applications not known to or contemplated by KRAL USA at the time of this Offer; (f) a purpose or application other than or varying in any degree from that for which the Products were designed; or (g) any attempted or actual alteration of the Products, components thereof, or documentation provided. Buyer further agrees to protect, defend, indemnify and hold KRAL USA and its affiliates harmless from and against any and all claims, expenses, loss or damage resulting from or arising out of any intentional, negligent or accidental injury or death of any employee, representative or agent of KRAL USA on the premises of Buyer.

**8. SOLVENCY OF BUYER** - By submitting any Purchase Order or other writing, Buyer represents and warrants that it is solvent, that the value of its assets exceeds its total liabilities and that it has the ability and will continue to pay its debts and obligations in the ordinary course of business as and when such debts and obligations become due. In the event Buyer becomes insolvent or in the event of any change that would render these representations inaccurate, Buyer will immediately notify KRAL USA of the same in writing.

**9. ADVERTISING** - Buyer shall not, without first obtaining the written consent of KRAL USA, in any manner advertise or publish the fact that Buyer had contracted to purchase the Products or services herein or use any trademarks or trade names of KRAL USA or its affiliates in Buyer's advertising or promotional materials.

**10. WARRANTIES** - KRAL USA warrants that for a period of one year from the Delivery Date of a Product Unit to Buyer that such Product Unit is free from defects in material and workmanship and that such Product Unit will conform to the requirements of the Order Confirmation including, but not limited to, the applicable descriptions and specifications as stated

in the Order Confirmation. This limited warranty against defects in material and workmanship shall not apply to Product Units that fail due to accident, abuse, alteration, wear and tear, corrosion, negligence, accident, faulty installation, or tampering which impairs normal operation of the equipment and shall only apply if the Product Unit in question is installed, operated and maintained in accordance with instructions provided by KRAL USA. Buyer shall return each Product Unit it deems to be defective at its cost prepaid to a location designated by KRAL USA after having requested and received a return Products authorization from KRAL USA. KRAL USA will not pay or reimburse any amount paid or incurred by Buyer for the repair of a Product Unit unless such repair has been authorized in writing by KRAL USA prior to such repair. This limited warranty only applies to Product Units sold by KRAL USA to Buyer. All preliminary reference drawings, specifications, samples, models, bulletins, or similar material provided by KRAL USA for the sale of the Products (collectively, the "Marketing Material") are provided for the sole purpose of identifying the Products and no warranties whatsoever are provided by KRAL USA with regards to such Marketing Material. KRAL USA does not provide any installation support for the Products and KRAL USA shall not be liable for any advice provided by KRAL USA regarding the installation of any Product Unit. THE ABOVE WARRANTIES ARE IN LIEU OF ANY OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER OBLIGATION ON THE PART OF MANUFACTURER WITH RESPECT TO ANY OF THE PRODUCT UNITS.

**11. LIMITATION OF REMEDIES/LIMITATION OF LIABILITY** – IN THE EVENT THAT ANY PRODUCT UNIT SOLD BY KRAL USA DOES NOT CONFORM TO THE ORDER CONFIRMATION OR IS DEFECTIVE, IT MAY ONLY BE RETURNED BY BUYER TO KRAL USA UPON PRIOR WRITTEN APPROVAL BY KRAL USA. IN SUCH CASE, KRAL USA SHALL EITHER REFUND THE PURCHASE PRICE PAID BY BUYER FOR SUCH NON-CONFORMING OR DEFECTIVE PRODUCT UNIT OR REPLACE SUCH NON-CONFORMING OR DEFECTIVE PRODUCT UNIT, AS IS DETERMINED IN THE SOLE DISCRETION OF KRAL USA. THESE SHALL BE THE EXCLUSIVE REMEDIES AVAILABLE TO BUYER HEREUNDER. KRAL USA SHALL NOT BE LIABLE FOR ANY INTEREST CHARGES, FREIGHT COSTS OR DAMAGES OF ANY NATURE. UNDER NO CIRCUMSTANCES SHALL KRAL USA BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RELATED TO THE SALE OF THE PRODUCTS.

**12. INSPECTION AND WAIVER OF DEFECTS** - Buyer shall inspect or test each Product Unit within ten (10) days of the Delivery Date. Buyer waives any right to assert any claim against KRAL USA arising from any nonconformity which could have been detected through a reasonable inspection or testing at the time of the Delivery Date, unless KRAL USA is advised of the nonconformity within ten (10) days of the Delivery Date, a period which the parties agree is reasonable for this purpose.

**13. CLAIMS** – Buyer shall inform KRAL USA for all warranty claims hereunder within three (3) days of discovery of a defect of a Product Unit. Buyer must obtain shipping instructions from KRAL USA prior to returning any Product Unit. Buyer shall return such Product Unity at its expense and in accordance with KRAL USA's instructions.

**14. FINANCE CHARGE** - If complete payment for a Product Unit is not made when due, the unpaid balance will be subject to a finance charge equal to 1.5 % percent of the unpaid balance per month. The amount of all finance charges will be added to the balance owed to KRAL USA. Buyer further agrees to pay all costs, expenses, collection costs and attorneys' fees paid or incurred by KRAL USA in collecting any and all amounts due related to the purchase of Products from KRAL USA.

**15. KRAL USA'S REMEDIES** - In addition to any remedies provided in these Terms, KRAL USA will be entitled to all remedies provided under applicable law. All remedies will be cumulative. In the event of any breach of these Terms by Buyer, KRAL USA shall have the right to recover any special, incidental or consequential damages arising from such breach.

**16. CANCELLATION BY BUYER** - In the event of a cancellation of part or all of a Purchase Order, Buyer shall pay to KRAL USA a cancellation fee determined by KRAL USA in its sole discretion. The cancellation fee will reflect, among other factors, all expenses and damages incurred and commitments made by KRAL USA and its affiliates, sales and administrative overhead, and lost profits. Any non-payment, default, delay or failure of performance by the Buyer may, in the sole election of KRAL USA, be treated as a cancellation by Buyer of part or all of the Purchase Order and shall further entitle KRAL USA to suspend delivery of Products. Upon cancellation, all further obligations and liabilities of KRAL USA

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shall terminate.

**17. MODIFICATION** - These Terms may only be modified by a document executed by KRAL USA and Buyer.

**18. CLERICAL ERRORS** - KRAL USA has the right to correct any stenographic or clerical errors in these Terms or in any of the documents provided by KRAL USA.

**19. LIMITATION OF ACTIONS** - NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE SALE OF PRODUCTS HEREUNDER MAY BE BROUGHT AGAINST KRAL USA MORE THAN ONE YEAR AFTER THE DELIVERY DATE.

**20. GOVERNING LAW AND CHOICE OF FORUM** – KRAL USA and Buyer agree that these Terms and the sale of Products from KRAL USA shall be governed and construed in accordance with the laws of the State of North Carolina. Any and all actions arising directly or indirectly out of the sale of Products shall be litigated in the courts located in the County of Mecklenburg, North Carolina, and KRAL USA and Buyer hereby consent to the exclusive jurisdiction and venue of those courts.

**21. NON-ASSIGNMENT** - Buyer may not assign or delegate its obligations hereunder without KRAL USA's prior written consent. Any assignment contrary to this provision shall be a material breach of these Terms. In the event of any assignment, whether approved by KRAL USA or not, the Buyer shall remain primarily obligated to KRAL USA.

**22. NO IMPLIED WAIVER** - The failure of KRAL USA at any time to require performance by the Buyer of any provision of these Terms shall in no way affect the right of KRAL USA to require such performance at any time thereafter, nor shall the waiver of KRAL USA of a breach of any provision of these Terms constitute a waiver of any succeeding breach of the same or any other provision.

### **23. TERMINATION**

KRAL USA may cancel the sale of any Product Unit not yet delivered and paid for by Buyer if:

- (1) Buyer defaults under these Terms or the terms of the Order Confirmation at any time;
- (2) Buyer makes any misrepresentation to KRAL USA;
- (3) Buyer is the subject of a proceeding under any bankruptcy law; or
- (4) It appears to KRAL USA that Buyer's financial condition is such that Buyer will not be able to pay for such Product Unit when payment is due.

**24. RELATIONSHIP OF PARTIES** - KRAL USA and Buyer are independent contracting parties and nothing in this Offer/Order Confirmation shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

**25. ENTIRE AGREEMENT** – These Terms, and the documents delivered concurrently herewith by KRAL USA contain the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersede and forever terminate all prior and contemporaneous representations, promises, agreements, understandings and negotiations of the parties with respect to the subject matter hereof. There are no agreements or understandings of the parties that are not expressly set forth herein or in the documents delivered concurrently herewith. No parole evidence of any prior or contemporaneous agreements, understandings or negotiations shall govern or be used to construe or modify these Terms. No modification or alteration of these Terms shall be deemed effective unless in writing and signed by the parties.

**26. SEVERABILITY** - In the event any provision of these Terms is found to be unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the parties shall receive the benefit contemplated herein to the fullest extent permitted by law. If a deemed modification is not satisfactory in the judgment of such court, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.