

DUCTING SYSTEM TERMS OF SALE

The terms and conditions of acceptance of sale set forth herein, and all drawings, specifications, descriptions and other documents attached hereto and incorporated herein by reference (collectively, the "terms") constitute the entire agreement between Kirk and Blum Manufacturing Company (Seller) and the Buyer. Seller's acceptance of this order is expressly conditioned by the Buyer's consent to the terms contained herein.

The terms and conditions of the Seller's proposal (if any) and acknowledgment shall prevail over any conflicting or different terms in Buyer's order unless Buyer notifies Seller in writing of its objections thereto within 10 days from receipt of Seller's acknowledgment. The failure of Seller to object to any provision in conflict herewith whether contained in Buyer's purchase order or otherwise, shall not be construed as a waiver of the provisions hereof nor as an acceptance thereof. Seller's proposal is preliminary only unless and until it is confirmed. If any of the terms and conditions of Seller's proposal conflict with these general terms and conditions, those contained in the proposal shall prevail.

1. **Sale of Goods.** Seller shall sell to Buyer and Buyer shall purchase from Seller the goods set forth in Seller's confirmation (the "Goods") in the quantities and at the Prices (as defined in Section 5) and upon the terms and conditions set forth in these terms.

2. **Delivery.**

(a) The goods will be delivered within a reasonable time after the date of these terms, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.

(b) Delivery shall be INCOTERMS EXW "EX WORKS" from Seller's facility (the "Delivery Point") using Seller's standard methods for packaging such Goods. Buyer shall take delivery of the Goods within ten (10) days of Seller's written notice that the Goods have been delivered to the Delivery Point. All Prices are EXW Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the quantity purchased under these terms.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

4. **Inspection and Rejection of Nonconforming Goods.**

(a) Buyer shall inspect the Goods within 10 days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in these terms; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 4(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 4(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under these terms to Seller.

5. **Price.** Buyer shall purchase the Goods from Seller at the price[s] (the "Price[s]") set forth in Seller's quote. If the Prices should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these terms shall be construed as if the increased Prices were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased Prices. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

6. **Payment Terms.** Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire transfer or check and in US dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under

applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

7. **No Setoff.** Buyer shall have no right, under these terms, any other agreement, document or law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller or any of its affiliates, whether under these terms or otherwise, against any other amount owed (or to become due and owing) to it by Seller or its affiliates, whether relating to Seller's or its affiliates' breach or non-performance of these terms or any other agreement between Buyer or any of its affiliates, and Seller or any of its affiliates, or otherwise.

8. **Warranties.**

(a) Seller warrants to Buyer that for a period of 12 months from the date of shipment of the Goods ("Warranty Period"), such Goods will materially conform to Seller's published specifications in effect as of the date of these terms and will be free from material defects in material and workmanship.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 8(a) SELLER MAKES NO WARRANTY WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(c) The Seller shall not be liable for a breach of the warranty set forth in Section 8(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 30 days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(d) The Seller shall not be liable for a breach of the warranty set forth in Section 8(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(e) Subject to Section 8(c) and Section 8(d) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, and as Buyer's sole and exclusive remedy for breach of warranty, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

9. **Limitation of Liability.**

(a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THESE TERMS, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

10. **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 these terms is confidential, solely for the use of performing these terms and may not be disclosed or copied unless authorized 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.

11. **Entire Agreement.** These terms, including and together with any related exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

12. **Severability.** If any term or provision of these terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

13. Amendments. No amendment to or modification to these terms is effective unless it is in writing and signed by each Party.

14. Waiver. No waiver by any Party of any of the provisions of these terms shall be effective unless explicitly set forth in writing and signed by the Party so waiving.

15. Cumulative Remedies. All rights and remedies provided in these terms are cumulative and not exclusive, and the exercise of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise. Notwithstanding the previous sentence, the Parties intend that Buyer's rights under Section 4 and Section 8 are Buyer's exclusive remedies for the events specified therein.

16. Assignment. Buyer shall not assign, transfer or delegate any of its rights or obligations under these terms without the prior written consent of Seller. Any purported assignment, transfer or delegation in violation of this Section shall be null and void. No assignment, transfer or delegation shall relieve Buyer of any of its obligations hereunder. Seller may at any time assign, transfer, delegate or subcontract any or all of its rights or obligations under these terms without notice to or consent of Buyer.

17. Force Majeure. Any delay or failure of Seller to perform its obligations under these terms will be excused to the extent that the delay or failure was caused directly by an event beyond Seller's control (which events may include natural disasters, embargoes, explosions, riots, wars, acts of terrorism, strikes, labor stoppages or slowdowns or other industrial disturbances, and shortage of adequate power or transportation facilities).