Kilian Manufacturing Corporation Terms and Conditions of Sale

Rev. 9/3/14

1. DEFINITIONS

"Seller":	Kilian Manufacturing Corporation, a Delaware corporation.
"Buyer":	The party contracting with the Seller for the purchase of the Goods.
"Contract":	The Seller's Terms and Conditions of Sale, any contract issued by the Seller (including any quotation or acknowledgement), and any technical or commercial specifications or terms and conditions expressly agreed to by the Seller in writing.
"Goods":	All or any part of the products, goods, work, equipment and services to be provided by the Seller under the Contract.

2. CONTRACT TERMS

All quotations, offers and tenders are made subject to these Terms and Conditions, and "Acceptance" of the Contract shall be subject to these Terms and Conditions. The Buyer shall be deemed to have accepted the Contract, including these Terms and Conditions, upon communication of its purchase order number to the Seller via telephone, electronic communication or other means, sending its purchase order to the Seller via facsimile, electronic communication, mail or other means, or performing any other act that indicates acceptance. The Seller will send the Buyer an order acknowledgement or other written or electronic communication confirming the Buyer's Acceptance of these terms. Any additional or different terms and conditions must be proposed by Buyer prior to Acceptance, as defined above, and expressly agreed to by the Seller in writing. Any additional and different terms and conditions not presented to the Seller prior to Acceptance by the Buyer and not specifically agreed to by the Seller in writing shall be deemed expressly rejected and shall not form part of the Contract.

These Terms and Conditions are intended by the Seller to be part and parcel of any offer, counteroffer or acceptance addressed to the Buyer. Upon Acceptance, the Contract shall constitute the final written expression of the entire agreement between the Buyer and the Seller. All prior, contemporaneous and subsequent representations, negotiations, and agreements, whether written or oral, including, but not limited to, terms and conditions submitted by the Buyer, shall have no legal effect and shall not become part of the Contract unless expressly agreed to in writing by the Seller and made a part hereof. No statement or recommendation made or assistance offered by the Seller or its representatives shall constitute a waiver of any portion of these Terms and Conditions, change the Seller's liability or constitute any guarantee or warranty.

3. ORDER

All orders are subject to acceptance and approval by Seller's credit department. All orders must show definite prices, delivery dates, exact quantities, complete product description, and when acknowledged by Seller in writing, are considered full commitments. All variations to an order requested by Buyer shall be in writing and the price shall be agreed prior to performance of any additional work by Seller. If Seller agrees to make any variations in accordance with this condition, then any dates quoted for delivery or completion shall be extended appropriately.

4. PRICE

All prices quoted are subject to change, without notice, at any time prior to Buyer's Acceptance. In the event that (i) the cost of raw materials and/or components increases due to unanticipated circumstances or otherwise and/or (ii) a vendor raises its prices or imposes a surcharge on Seller, Seller reserves the right to increase prices and/or surcharge Buyer, and Buyer agrees to accept such price increase or surcharge until the term of such price increase or surcharge ends or until the termination of the Contract. Such prices and surcharges may be adjusted by the Seller to reflect a change in underlying costs. If there is a delay in completion of shipment of any order due to any change requested by Buyer or as a result of any delay on Buyer's part in furnishing information required for completion of the order, the price agreed upon at the time of Acceptance is subject to change. Unless otherwise agreed in writing by the parties, prices are FCA shipping point (Incoterms 2010) and exclusive of all taxes – Federal, State or Local (including, without limitation, sales, use, excise, manufacturing, receipts, gross income, occupation, value-added and similar taxes). There will be added to the quoted price any sales or other tax or duty Seller may be required to collect or pay upon the sale of Goods quoted. If such amount is not included in the invoice for the Goods, it may be invoiced separately later. Unless specifically included in the price, the cost of any required performance and/or payment bond will be added to the price.

5. TERMS OF PAYMENT

Unless otherwise agreed in writing by the parties, all invoices are payable within thirty (30) days of the invoice date. Where Goods are delivered by installments, Seller may invoice each installment separately and Buyer shall pay such invoices in accordance herewith. Invoices not paid in accordance with terms are subject to interest charges at the rate of one and one-half percent (1.5%) per month, unless prohibited by law, in which event invoices will be subject to interest charges at the maximum legal rate. No dispute arising under the Contract nor delays beyond the reasonable control of Seller shall interfere with Buyer's prompt payment in full of any invoice. Time and terms of payment are essential hereto, and if any default therein be made by Buyer, or if the financial responsibility of Buyer shall at any time become impaired or unsatisfactory to Seller, Seller will have the right to terminate without notice or to defer or discontinue further shipments hereunder until past due payments are made or satisfactory assurance of Buyer's financial responsibility is received by Seller (without prejudice, however, to any claims or rights which Seller may have in law or equity hereunder). Such right will continue irrespective of any prior failure on the part of Seller to exercise such right. If Seller is required to refer any order to an attorney for collection, Buyer agrees that all costs, attorney fees, and expenses of said collection shall be added to the amount due Seller from Buyer.

6. SHIPMENT AND DELIVERY; INSPECTION

Unless otherwise agreed in writing by the parties, all Goods will be shipped FCA Seller's facility (Incoterms 2010) and both title and risk of loss (including transportation delays and losses) shall pass to Buyer upon delivery to the carrier at the shipping point, whether Seller prepays freight or not. Seller will ship "Freight Collect" unless otherwise specified. Seller reserves the right to prepay the freight and invoice Buyer for costs, including reasonable packaging costs. If Buyer does not specify a carrier, then Seller shall select the method of transportation. Time is not of the essence of the Contract, all shipping dates are estimates and Seller shall not be responsible for any delays whatsoever. The date of delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from Buyer.

Seller will endeavor to comply with reasonable requests of Buyer to postpone delivery, but shall be under no obligation to do so. Where delivery is postponed other than due to default of Seller, or in the case of Buyer's refusal or inability to accept any shipment in accordance with the terms of any order, Buyer shall be liable for freight, express, storage, extra cost of handling and all other applicable expenses incurred by Seller as a result of such postponement, refusal or inability.
All Goods which have been altered or damaged are not returnable except with Seller's prior written consent. To reject Goods on inspection as defective, Buyer must notify Seller in writing within ten (10) days from receipt of the Goods. Before allowing or rejecting a claim, Seller shall then have the option of reinspection at Buyer's facility or at its own. Defects that do not impair service shall not be a cause for rejection. Seller shall have the right to replace within a reasonable time any Goods which in Seller's opinion do not conform to the order. No claim will be allowed for any Goods damaged by Buyer or damaged in transit. Expenses incurred in connection with claims for which Seller is not liable, will be charged to Buyer. Seller will not be responsible for any work done to correct errors unless such work is authorized by the written consent of Seller.

7. TOOLING

Any equipment (including all jigs, dies and tools) which Seller constructs or requires for use in the production of materials for Buyer shall be and remain Seller's property and in Seller's possession and control, and any charges therefor shall be for the use of such equipment. Seller will use commercially reasonable efforts to handle and store carefully while in its possession any materials or equipment owned or furnished by Buyer, but Seller shall not be liable for damage or loss thereof. When for three (3) consecutive years no orders have been received requiring the use of any equipment or materials referred to in this paragraph, Seller may dispose thereof as it sees fit, without liability to Buyer, provided written notice is submitted thirty (30) days in advance. Tooling required for the manufacture of custom designs may be quoted separately as a one-time charge to Buyer. Charges will be invoiced upon completion of manufacturer of the tooling.

8. LIMITED WARRANTY; LIMITATION OF LIABILITY

The Seller warrants that the Goods will be free from defects in material and workmanship for a period of twelve (12) months from delivery, or such other period as shall be agreed upon in writing by the parties. Seller's limited warranty excludes remedy for damage or defect caused by abuse; failure to resist corrosion or erosion from any corrosive agent or fluid, or due to deposits of foreign material from any fluid; modifications not executed by Seller; improper installation or operation; defects or failures arising out of, in any way related to, or as a result, either direct or indirect, of the Buyer's failure to properly advise the Seller of all normal and special operating conditions, known to or suspected by the Buyer, when the Seller is manufacturing the Product for a specific operation; or normal wear and tear under normal usage. All weights stated in Seller's catalog and lists are approximate and are excluded from this warranty. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, THE SELLER MAKES NO OTHER WARRANTY WITH RESPECT TO THE GOODS DELIVERED HEREUNDER AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, ARISING BY OPERATION OF LAW OR OTHERWISE.

Seller must be notified in writing of any defect in the Goods within a reasonable period of time after discovery (not to exceed thirty (30) days) and the defective Goods must be delivered within the warranty period specified above, prepaid, to Seller's factory, with evidence that the Goods have been properly installed, maintained and operated in accordance with Seller's instructions. If the Seller determines that any such returned Goods are not in conformity with the warranty set forth herein, then Seller shall, at its sole option and expense, either repair the same or supply replacement Goods.

The remedies of Buyer set forth herein are exclusive, and the total liability of Seller hereunder, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, and shall not exceed the purchase price of the Goods giving rise to any such claim for liability. IN NO EVENT SHALL SELLER OR ITS SUPPLIERS BE LIABLE TO BUYER, ANY SUCCESSORS IN INTEREST, OR ANY BENEFICIARY OF THIS CONTRACT FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES OR LOSSES, OR FOR ANY SECONDARY CHARGES OR ADMINISTRATIVE OR PUNITIVE DAMAGES, FINES, PENALTIES, FEES, EXPENSES AND OTHER CHARGES, ARISING OUT OF THE CONTRACT OR ANY BREACH THEREOF, WHETHER BASED UPON LOSS OF USE, LOSS OF PRODUCTION, LOST PROFITS OR REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED EXPENSES OF OPERATION OR CLAIMS OF CUSTOMERS OF BUYER FOR SERVICE INTERRUPTION, OR ANY OTHER TYPE OF ECONOMIC LOSS OR DAMAGE, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE.

9. THIRD PARTY RIGHTS

Buyer shall bind subsequent buyers or lessees of the Goods to the terms of the Contract such that said third parties shall have no further rights against Seller than does Buyer. Buyer agrees to notify said third parties of this provision and to make this a condition of any contract concerning the Goods. In the event Seller is subject to any claims, losses, damages or expenses (including attorneys' fees) as a result of Buyer's failure to comply with this paragraph, Buyer shall indemnify and hold harmless Seller from all such claims, losses, damages or expenses (including attorneys' fees).

10. PROPRIETARY INFORMATION; CONFIDENTIALITY

All drawings, models, documents, confidential records, software and other information supplied by Seller are supplied on the express understanding that all copyright and design rights are reserved to Seller and that Buyer will not, without the written consent of Seller, either give away, loan, exhibit, or sell such drawings, models, documents, confidential records, computer software or other information or extracts therefrom or copies thereof or use them in any way except in connection with the Goods in respect of which they are issued.

Buyer shall consider all information furnished by Seller, which was not previously publicly disclosed by Seller, to be confidential and shall not copy nor disclose any such information to any other person, nor use any such information for commercial purposes, nor make copies of such information without written permission from Seller. Buyer shall not disclose any information relating to any order without Seller's written permission. Unless otherwise agreed in writing by the parties, no commercial, financial or technical information disclosed in any manner or at any time by Buyer to Seller shall be deemed secret or confidential and Buyer shall have no rights against Seller with respect thereto.

11. STATUTE OF LIMITATIONS

Pursuant to Section 2-725(1) of the Uniform Commercial Code, Buyer and Seller agree that the statute of limitations is limited to eighteen (18) months from the time a breach occurs.

12. MANUALS AND WARNINGS

Seller's instruction manuals and warnings are available upon request. Buyer acknowledges and accepts complete responsibility for ensuring that such manuals and warnings, and all future updates, are made available to and utilized by all users of the Goods; and that said individuals are properly trained to safely and competently operate the Goods. Buyer further accepts complete responsibility to make such instruction manuals and warnings available to all subsequent purchasers of the Goods. Buyer agrees to indemnify and hold harmless Seller from any and all claims, losses, damages or expenses (including attorneys' fees) arising from or in any way connected with Buyer's responsibility hereunder.

13. TERMINATION/CANCELLATION

Cancellation of orders once placed with or accepted by Seller can be made only with Seller's consent. Should Buyer, due to good cause, desire to affect the cancellation of an accepted order, Seller will accept such cancellation on the following basis:

(a) For all made-to-order Goods: Buyer shall pay the purchase price in full for all items completed and ready for delivery; Buyer shall pay a percentage of the purchase price on such items as shall not be completed, equivalent to the percentage of completion; and Buyer shall pay in full the cost of all raw materials, consumable materials, manufacturing dies, tools, patterns and fixtures acquired exclusively for the order, and will take ownership and possession of all such items and will be responsible for labor or other documenting expenses incurred in connection therewith.

(b) For all made-to-stock Goods: Buyer shall pay (i) all costs and expenses of placing the cancelled Goods in a saleable condition (restocking charge), (ii) any outgoing and incoming freight charges incurred by Seller in connection with the delivery and return of such Goods, if applicable, and (iii) all reasonable and necessary expenses incurred by Seller directly incident to the order up to the date of cancellation.

Invoices covering said costs shall be due and payable immediately upon Seller's acceptance of cancellation. A stop work order will be deemed a cancellation and the provisions of this paragraph shall apply. If Buyer purchases Goods pursuant to an order for use in a contract with the U.S. Government and the U.S. Government terminates Buyer's prime contract or a portion thereof for convenience, Buyer shall have the right to terminate only that portion of its contract with Seller which has been terminated by the U.S. Government in its prime contract. In such case, Buyer shall be responsible for those costs set forth above.

14. FORCE MAJEURE

Seller shall not be liable for failure to deliver or delays in delivery or manufacture occasioned by causes beyond the reasonable control of Seller including, but not limited to, strikes, labor slowdowns, lockouts, fires, floods, riots, thefts, accidents, embargoes, import or export limitations, war or other outbreak of hostilities, terrorist activity, sabotage, riot, insurrection, civil disobedience or disturbance, acts of God, acts of the public enemy, unusually severe weather, inability to obtain shipping space, machinery breakdowns, delay of carriers, interruptions or failures of transportation, utilities, computers or communications, delay in obtaining or inability to obtain sufficient labor, materials, supplies or services, and any action by or law or regulation of any government, quasi-governmental or supranational body or agency. In the event of any such delay, (1) the time for performance shall be reasonably extended, (2) Seller and Buyer shall take reasonable steps to reestablish the timetable set out in the Contract, and (3) an adjustment shall be made for additional costs to Seller. If the Force Majeure event results in Contract termination, Buyer shall reimburse Seller for the applicable costs set forth in Section 14 above.

15. GENERAL PROVISIONS

Any term found to be illegal or unenforceable shall be severed and shall not, in any way, affect the validity of the Contract. Seller's failure to enforce any rights or remedies available in the event of the Buyer's default shall not constitute a waiver and shall not bar the enforcement of such rights should the default continue as in the event of future defaults. The Contract is entered into in the state and county where Seller (facility providing the Goods to Buyer) is located, and shall be construed in accordance with the laws of such state, without regard to the conflicts of law provisions of such state. It is expressly agreed that any legal action which is instituted as a result of a dispute arising out of the performance of the Contract shall be brought in the state or local court having jurisdiction in the court where Seller (facility providing the Goods to Buyer) is located, or in the Federal District Court which encompasses that county, and all parties consent to venue and personal jurisdiction in the courts thereof. Buyer shall not assign the Contract or any order, or any interest therein, or any rights hereunder, without the prior written consent of Seller. Seller shall be entitled to assign or sub-contract the whole or part of its obligations under the Contract.

16. COMPLIANCE WITH LAWS

Buyer agrees to comply with all applicable federal, state, local and foreign laws, statutes, ordinances, regulations, rules or orders or other requirements of any governmental, regulatory or administrative agency or authority or court or other tribunal to which Buyer may be subject as a result of the activities contemplated by these Terms and Conditions.

17. EXPORT CONTROL REGULATIONS

Buyer understands that Seller and the Goods are subject to the United States Export Administration Act, the Trading with the Enemy Act, the International Traffic in Arms Regulations (in the case of Goods that are considered defense articles), and other laws and regulations of the United States of America (collectively, the "Regulations"), which Regulations are enforced, inter alia, by the United States Departments of Commerce, State and Treasury. The Regulations, in part, prohibit export or diversion of the Goods to certain countries. Buyer agrees to abide by all Regulations, including those concerning the resale and disposition of the Goods. Buyer warrants that it will not sell, transfer or support, directly or indirectly, or assist in any sale or transfer of any products or product technology in countries or to users concerning which such sale, transfer or support is not permitted under applicable Regulations. Buyer shall defend, hold harmless and indemnify Seller for any damages resulting to Seller from a breach of this paragraph by Buyer.

18. GOVERNMENT CONTRACTS

If Buyer purchases Goods for use in a contract with the United States government, then all terms and conditions contained in the form entitled "Additional Terms and Conditions Applicable to Government Contracts" shall apply to the Contract as if contained herein, whether attached to the order or not. If not attached, copies will be furnished to Buyer upon request. Alternatively, at Seller's discretion, such additional terms and conditions shall be specified in Seller's quotation and/or order acknowledgement and shall be binding upon the parties as if set forth in full herein.

19. PRINTERS, STENOGRAPHIC, AND CLERICAL ERRORS

Seller is not responsible for printers' errors made in any of its publications and other forms of printed matter, or for any stenographic and clerical errors. All such errors are subject to correction.