

Standard Conditions of Sale KFX Development LLC. (USA)

DEFINITION OF TERMS

In these terms:

The “Company” means KFX Development.

The “Goods” means all goods and services to be supplied under this “Quotation”.

BUYER’S ACCEPTANCE

These General Terms and Conditions of Sale (“Terms and Conditions”) shall apply to every sale by the Company of its Goods. By placing, confirming or accepting delivery of any order for Goods, you (hereinafter referred to as the “Buyer”) agree to these Terms and Conditions of Sale, which shall supersede and take precedence over any other terms and conditions which may be supplied by Buyer with respect to the sale and shipment of the Goods hereunder.

QUOTATION VALIDITY

Quotations remain valid for a period of 30 days from the date indicated therein unless otherwise stated or previously withdrawn. The Company reserves the right to accept or refuse Buyer’s order for Goods at any time by sending written confirmation or refusal to BUYER. No order of Goods may be cancelled or modified by Buyer except as provided herein.

CANCELLATION

An order placed by Buyer cannot be cancelled, suspended, or extended without the Company’s express prior written consent and then only upon terms that will indemnify the Company against loss and provide the Company with a reasonable profit for its time, services, use of facilities and otherwise. Buyer will be obligated to accept any Goods shipped or delivered by the Company prior to cancellation, suspension or extension of the order. In the event of such cancellation or modification to any order of Goods by Buyer (with the Company’s express prior written consent), Buyer will be required to pay the Company as liquidated damages (and not by way of penalty), an amount equivalent to twenty five (25%) percent of the value of Goods to which the cancelled or revoked order applied to, without prejudice to compensation of any further damages. The Company reserves the right to suspend or terminate its performance of any order from Buyer, even if the order has been confirmed by the Company, or to condition delivery of the Goods upon advance payment in full of the price and / or any other sum that may be due from Buyer to the Company. The Company may cancel any order, in whole or in part, without liability, if Buyer becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Buyer under any state or federal law relating to bankruptcy, reorganization, receivership, or assignment for the benefit of creditors, or if the Company believes that Buyer’s ability to make payment is or may become impaired or if Buyer is in default of payment or otherwise in default under any order or contract with the Company. The Company also reserves the right to cancel, in whole or in part, or to suspend or delay, in whole or in part, any orders due to (i) the unusually large size of an order, (ii)

shortages of, or failure of the Company's suppliers to deliver, or (iii) any other event of force majeure or beyond the Company's control.

PRICE

Unless otherwise stated, the price is packed ex-works and excludes installation and training. All prices are stated exclusive of any applicable taxes. The price of Goods ("Price") is that which is set forth in this Quotation or otherwise indicated to Buyer by the Company.

RISK

Unless otherwise specified by the Company, the Goods will be sold to Buyer, "EXW" (as defined in "Incoterms 2000), the Company's facility or such other location as shall be indicated to Buyer by the Company (the "Point of Delivery"). Risk of loss or damage to the Goods shall pass to Buyer when Goods are placed at the disposal of Buyer or Buyer's carrier at the Point of Delivery (collection by Buyer or Buyer's carrier shall constitute a delivery).

SPECIFICATIONS

The Company reserve the right to alter specifications, where necessary, to comply with regulations or legal requirements or where such alterations do not in the Company's reasonable opinion materially affect your expressed requirements

"COMPANY" TRADEMARKS

Buyer acknowledges its awareness of the fact that the Company is the sole and exclusive owner of all trademarks, marks, service marks, tradenames, logos, Symbols, trade dress or other intellectual property relating to, used in connection with, or derived from, its name, services or products (the "Trademarks"). Buyer shall use and display the Trademarks only in such form and manner as provided and pre-approved in writing by the Company, including without limitation, use of the Trademarks on advertising, promotional or publicity materials, point-of-sale displays, websites, stationary or business cards and shall not use the Trademarks on any such items unless so approved. Buyer may not register any similar trademarks, marks, logos, trade dress or symbols. Buyer acknowledges the exclusive right, title and interest of the Company in and to the Trademarks, and shall not at any time contest or in any way impair such right, title and interest, or indicate to the public in any manner whatsoever that Buyer has or has ever had an interest in the Trademarks other than the right to use them as specified herein. Buyer shall not attempt to acquire any rights in connection with the Trademarks or other intellectual property of the Company. Any use by Buyer of the Trademarks shall not in any way create any right, title or interest in or to the Trademarks or any other intellectual property of the Company. Upon written notice by the Company, Buyer shall immediately discontinue any and all use of the Trademarks, and shall, within five (5) business days of such termination, return to the Company or destroy any printed material, and all signs, upon which any of the Trademarks appear in any form whatsoever. Should Buyer fail to comply with these obligations, the Company shall have the right to immediately terminate any orders with Buyer, without

prejudice to damages against Buyer. In addition, with respect to any use of the Trademarks on the internet, any use of the Trademarks shall be conditional upon

PROPRIETARY RIGHTS

All rights in design, patents and copyrights of the Company (the "Intellectual Property") used on or in connection with the Goods are proprietary and shall remain the exclusive property of the Company. Buyer shall not either directly or indirectly reproduce or simulate, or cause or allow anyone to reproduce or simulate, any Intellectual Property. No right in pattern and design with respect to the Goods hereunder passes to the Buyer. Any form of reproduction or use of the Intellectual Property (or any other distinguishing marks applied to the Goods) including but not limited to use outside Buyers sales outlet and for purposes other than those agreed by the Company (particularly with respect to internet sites or any other forms of electronic sales), is strictly prohibited without the prior written authorization of the Company. Buyer shall not, at any time, knowingly or intentionally, engage in any activity or perform or permit any act which may in any way adversely affect any rights of the Company to the Intellectual Property or any registrations or applications for registration thereof or which may directly or indirectly reduce the value of the Intellectual Property or derogate or detract from the repute thereof.

COMPLIANCE

You are responsible for complying with all federal, state and local laws with respect to the importation and sale of the Goods.

DELIVERY TERMS

The terms for delivery indicated in this Quotation, in the confirmation of order or elsewhere are not binding upon the Company, but merely indicative. The Company is therefore entitled to deliver all or part of any order of Goods in advance, or within a reasonable delay period, without entitling Buyer to request full or partial termination of the order, claim compensation or indemnity, or invoke the responsibility of the Company for any other reason. The Company shall not, under any circumstances, be responsible for delays in delivery due to force majeure, non-compliance by third parties, provisions put into force by public authorities, strikes, etc. Should the Buyer refuse to receive all or part of the Goods delivered at the Point of Delivery the Company may, at its own choice, require compliance with the contract, or declare said contract terminated in full or in part. In both the above cases, the Company maintains the right to claim compensation for damage. It is expressly stated that the Company shall not be considered responsible for any risks or expenses that may derive from or relate to holding the Goods in store.

INSTALLATION

Where the Agreement includes installation Buyer will upon request provide all necessary site access and facilities to enable the Company's engineers to carry out installation of equipment promptly and without delay. The Company will use all commercially reasonable efforts to obtain visas and work permits to enable its engineers to carry out the installation. Where required you will assist in obtaining visas and work permits. If,

despite the use of such efforts, the Company is unable to obtain visas and work permits it shall be excused from further performance of the obligations to install equipment.

WARRANTY

The Company warrants, to the original purchaser only, that this product will be free from defects in materials and workmanship under normal and proper usage for a period of one (1) year from the date of purchase. The Company's obligation under this warranty is limited to replacing or repairing, at the Company's option, products or parts determined by the Company to be defective in materials or workmanship. This parts and labour warranty is subject to the terms and conditions set forth below. This warranty does not extend to faults caused by tampering or improper use of the Goods. This warranty does not extend to surface damage or to any deformity in the Goods, colors, numbers, finishes and assortments, nor to any irregularity in the packing and boxes, that fall within the normal tolerances in use at the time and in the place of delivery to the shipping agent or carrier. The Company makes no other warranty or representation with respect to the Goods, either express or implied, including without limitation, that of merchantability or fitness for a particular use, or of any factors of quality, except as provided herein. Buyer is obliged to check the Goods immediately upon their arrival. Any claim for defects, including hidden faults, or failure of the Goods to comply with these Terms and Conditions, must be made by Buyer, upon penalty of forfeiture, within thirty (30) days from receipt of the Goods. No action for breach of this warranty may be commenced more than one (1) year after the accrual of the cause of action. The foregoing constitutes Buyer's sole and exclusive remedy and the Company's sole obligation with respect to Goods furnished hereunder.

NOTIFICATION OF WARRANTY CLAIMS

All warranty claims must be made in writing and must include date and proof of purchase

EXTENT OF LIABILITY

This warranty is given to the original purchaser of the goods only and cannot be assigned, except with the prior written agreement of The Company. Subject to these terms and conditions, The Company will repair or replace, free of charge, any product or defective part provided that the defective part of the product has been returned to The Company or its authorized agent, freight pre-paid. If any defective product has been superseded and cannot be repaired, replacement will be made with a current model of the same quality and equivalent function.

EXCLUSION OF LIABILITY

This warranty does not cover any damage, defects or costs caused by: (1) modification, alteration, repair or service of the product by anyone other than The Company or its authorized representative; (2) physical abuse to, overload of, or misuse of, the product, or operation of the product in a manner contrary to the instructions accompanying the product; (3) any use of the product other than that for which it was intended; or (4) shipment of the product to The Company for service. UNDER NO CIRCUMSTANCES SHALL THE COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, PROPERTY DAMAGE, DAMAGE TO OR LOSS OF EQUIPMENT,

LOST PROFITS OR REVENUE, COSTS OF RENTING REPLACEMENTS AND OTHER ADDITIONAL EXPENSES, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. ANY EXPRESS WARRANTY NOT PROVIDED HEREIN, AND ANY REMEDY WHICH, BUT FOR THE WARRANTY CONTAINED HEREIN, MIGHT ARISE BY IMPLICATION OR OPERATION OF LAW IS HEREBY EXCLUDED AND DISCLAIMED INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS, WHICH MAY VARY FROM JURISDICTION TO JURISDICTION.

PAYMENT

Unless otherwise agreed, an irrevocable Letter of Credit confirmed by a bank approved by the Company is required. Where an agreed line of credit has been opened with the Company, payment terms are strictly on delivery. If payment is not made on the due date, the Company may in addition to all other remedies it has, suspend performance of this and any other agreement with you and/or charge you interest (both before and after judgment) calculated at a daily rate equivalent to 5% over the base rate of Wachovia Bank, N.A.

RETENTION OF TITLE

The property in the Goods shall not pass to you until they have been paid for in full and all other amounts owed by you to the Company on any account have been paid. You may not sell the Goods until the property has passed.

INCOTERMS

The interpretation placed by Incoterms 1990 on terms of trading obtained in any order resulting from this quotation shall apply.

FORBEARANCE

No failure by the Company to exercise any of its rights at any time shall prejudice the rights of the Company under the Agreement or affect the interpretation of future agreements.

RELIANCE

By placing your order you acknowledge that you place no reliance on any statement which has been made or may be made concerning the order other than one made by us in writing and any statement is excluded from the agreement.

FORCE MAJEURE

The Company shall not be liable for any delay in delivery, or failure to deliver, due to any cause beyond the

Company's control, including but not limited to present or future statute, law, ordinance, regulation, order, judgment or decree, shortages, act of God, earthquake, epidemic, explosion, flood, lockout, boycott, strike, riot, terrorism, war or armed conflict (whether or not there has been an official declaration of war or official statement as to the existence of a state of war), or act of a public enemy, delay in transportation or lack of transportation facilities.

CONTRACT

This is an indicative quotation and does not form a contract until we accept in writing any offer you make. Any contract entered into would be subject to Standard 'Conditions of Sale unless otherwise agreed in writing.

GOVERNING LAW / ARBITRATION

This Quotation and Terms and Conditions shall be governed by the laws of the State of New York applicable to contracts made and to be performed in that state. Any controversy or claims arising out of or relating to any sale hereunder shall be determined and settled by arbitration in New York City, in accordance with the Commercial Rules of the American Arbitration Association by a panel of three (3) arbitrators. The parties agree that the arbitrators shall have the power to award damages, injunctive relief and reasonable attorneys' fees and expenses to any party in such arbitration. The arbitration award will be final as between the parties and judgment thereon may be entered in any court of competent jurisdiction. Any party hereto may make an application for the issuance of a temporary restraining order and/or preliminary injunction from any court of competent jurisdiction pending the determination of any controversy pursuant to the arbitration provisions set forth in this Article. The parties hereby consent and submit to the personal jurisdiction of the United States District Court for the Southern District of New York and any New York State court of competent jurisdiction located in New York County, New York in any suit, action or proceeding brought in connection with arbitration hereunder.

STATUTE OF LIMITATIONS

Any action for breach of contract hereunder, except for actions by the Company to collect sums due for Goods sold and delivered, must be commenced within one (1) year of accrual.

SEVERABILITY

If any provision of this Quotation and Terms and Conditions shall, to any extent, be invalid or unenforceable, the remainder of the Quotation and Terms and Conditions shall not be affected.

WAIVER; MERGER; MODIFICATION

No failure of the Company to insist upon strict compliance by Buyer with this Quotation and these Terms and Conditions or to exercise any right accruing from any default of Buyer shall impair the Company's rights in case Buyer's default continues or in case of any subsequent default by Buyer.

Prices and Specifications subject to change without notice.