

# ***Kinetics Industries, Inc***

***140 Stokes Ave.***

***Trenton, NJ 08638***

***Tel: 609-883-9700 Fax: 609-883-0025***

***Web site: [kinetics-industries.com](http://kinetics-industries.com)***

***E-mail: [info@kinetics-industries.com](mailto:info@kinetics-industries.com)***

## ***Kinetics Industries, Inc.***

### **Purchase Order / Procurement Corporate Standard Terms & Conditions**

1. **Purchaser:** Whenever the word “Purchaser” is used herein, it shall be deemed to mean Kinetics Industries Inc. , and includes Purchaser’s Purchasing Manager and any and all writings required or requested must be signed by such Purchasing Manager or any officer of Purchaser. No other signature will be recognized as binding upon Purchaser and no agreements, modifications, variations, charges, notices or consents are or will be enforceable against Purchaser unless confirmed in writing by such Purchasing Manager or any officer of Purchaser.
2. **Seller:** Whenever the word “Seller” is used herein, it shall mean Seller and Seller's officers, employees, agents and persons identifying themselves as acting for and with the authority of Seller.
3. **Applicability:** The Seller agrees that the terms and conditions set forth herein shall be applicable to all purchase orders from Purchaser of Seller's products and shall supersede all printed terms and conditions set forth in any order confirmation used by the Seller. Purchaser hereby objects to any terms and conditions appearing in Seller's purchase order form or order confirmation which modify (materially or otherwise), contradict, or are in addition to the terms and conditions appearing herein. Seller recognizes and acknowledges that its acceptance of a purchase order from Purchaser is expressly limited to the terms contained herein and Seller agrees that any terms, conditions or provisions in any printed matter supplied by Seller which are inconsistent with any terms contained herein, including any statement that purports to reject additional or varying terms of this purchase order, or which limit acceptance to the terms contained in any Seller's purchase order form or order confirmation are null and void and of no force and effect.
4. **Acceptance of purchase order:** All purchase orders presented by Purchaser to Seller shall be deemed to incorporate the terms and conditions contained herein. Seller shall not be able to accept Purchaser’s order without also accepting these terms and conditions, which shall become a part of the contract when Purchaser’s purchase order is accepted by Seller. Seller has the responsibility to review purchasers purchase order and immediately notify the purchaser of any discrepancies, conflicts or non-acceptance of terms of sale. Order acceptance for shipment or delivery constitutes acceptance of Kinetics’ standard terms and condition of purchase.
5. **Pricing, taxes & dutines:** All prices for products shall be F.O.B. Seller's loading dock. The purchase order shall include and separately itemize all taxes, levies, duties or excises that may be imposed by any authority, arising from the sale, delivery, or use of the products and which Purchaser is to pay. The negotiated purchase price, on the purchase order, is a fixed price contract and not subject to pricing escalations due to material shortages or increased material or labor costs. Purchaser shall not be liable for any tax, levy, duty or excise that is not included and itemized on the purchase order. If an item is shipped to Kinetics “prepaid & added”, documentation shall be provided in support of the actual freight charged by the carrier per FCC regulations and compliance.

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6. **Delivery / Risk Of Loss / Packaging / Freight damage claims:** Seller shall ship all goods by common carrier as designated by Purchaser to Seller in writing. Purchaser shall not be liable for any shipping or delivery charges incurred by Seller if Seller does not comply with Purchaser's written delivery instructions. In the absence of specified written delivery instructions from Purchaser, Seller is authorized to ship all goods by carrier F.O.B. Seller's loading dock. All costs for freight shall be based on those freight rates in effect on the date of shipment. Seller will prepare its products for normal, commercial, overland truck handling. All claims for breakage and damage, whether concealed or not, must be made to the carrier as soon as possible after the receipt of any such shipment. Seller will provide Purchaser with reasonable assistance in securing adjustments from the carrier for such damage claims. Transfer of title and the risk of loss of all products passes to the Purchaser when the products are made available to the common carrier for loading onto its vehicles at Seller's loading dock.
7. **Inspection:** If, upon the Purchaser's receipt and inspection of the goods, such goods shall appear not to be in conformance with the contract, the Purchaser shall, within ten (10) business days after the receipt thereof, notify the Seller of such non-conformance and afford the Seller a reasonable opportunity to inspect the goods and make any appropriate adjustment, repair, or replacement provided, however, any nonconformity of the goods resulting from an occurrence in transit shall not be Seller's responsibility and shall not be a basis for rejection by Purchaser. Purchaser shall have the right to accept conforming goods and reject all non-conforming goods without such acceptance being deemed an acceptance of the entire shipment. At Purchaser's election, Seller shall immediately replace all non-conforming goods with conforming goods or provide Purchaser with a pro-rata credit based upon unit price or measurement for such non-conforming goods, which Seller shall retrieve from Purchaser at its sole cost and expense.
8. **Payment terms:** Unless otherwise provided, payment for products purchased and delivered under this contract shall be made in U.S. dollars at the prices and time stipulated. In no event shall any late payment fee exceed one (0.5) % of the purchase order price (exclusive of shipping, taxes and levies) or any interest exceed six percent (4.5%) per annum. COD or CIA purchase must include a cash payment terms discount of a minimum of 2% of purchase price. The seller may not charge a "premium fee", service fee or handling fee for credit card payment. Sellers requiring EFT payment are responsible for all service fees associated with the transaction.
9. **Delays in shipment / Force majeure:** Seller shall meet the delivery dates and schedule dates as shown on this purchase order. For each day that a delivery is delayed beyond the scheduled delivery date, at Purchaser's election, Purchaser shall either be entitled to a credit equal to one percent (0.5%) of the purchase price or Purchaser may pursue a legal action for its damages. Reasons that are beyond the sellers control, such as labor strikes, war and acts of God are exempt from late shipment penalties.
10. **Shipping weights & dimensions:** Seller shall warrant the weights and dimensions as stated in the purchase order. Failure to meet the stated weights and dimensions shall render the goods non-conforming.

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11. **Kinetics Industries Inc. technical data, tools., fixtures, dies, jigs & molds:** All of Purchaser's designs, plans, drawings and technical data as furnished by Purchaser to the Seller, if any, are and shall remain the property of Purchaser. Purchaser retains any and all patent, trade secret, copyright, and other proprietary rights, including exclusive rights as to use and/or manufacture and/or sale. Prints and drawings are to be reviewed only by authorized personnel of the Seller. Purchaser does not convey any permission to show, reproduce or manufacture materials shown on such designs, plans or drawings. If requested by Purchaser, Seller shall execute and deliver a confidentiality agreement to Purchaser in form and substance satisfactory to Purchaser. The absence of such confidentiality agreement, however, shall in no way relieve Seller of its obligations hereunder to hold the information specified herein in strict confidence. Title shall remain in Purchaser to all tools, fixtures, dies, jigs, molds and/or similar devices used by Seller in the manufacture of the products unless otherwise agreed in writing by and between Purchaser and Seller.
12. **Warranty:** Seller warrants to Purchaser that the products will be free from defects in design, material and workmanship and will conform to the specifications as stipulated in this contract. Purchaser shall not accept and hereby rejects all disclaimers of warranty, whether express or implied, made by Seller with respect to the products.
13. **Patent indemnity:** Seller shall conduct, at its own expense, the entire defense of any claim, suit or action alleging that, without further combination, the use or resale by Purchaser of the goods delivered hereunder directly infringes any United States patent, but only on the conditions that : (a) Purchaser received prompt written notice of such claim, suit or action and full opportunity and authority to assume the sole defense thereof, including settlement and appeals, and all information available to Purchaser for such defense; (b) said goods are made according to a specification or design, furnished by Seller or, if a process patent is involved, the process performed by the goods is recommended in writing by the Seller; and (c) the claim, suit or action is brought against Purchaser. Provided all the foregoing conditions have been met, Seller shall, at its own expense, either settle said claim, suit or action or shall pay all damages excluding consequential damages, and costs awarded by the court therein and, if the use or resale of such goods is finally enjoined, Seller shall, at Seller's option, (i) procure for Purchaser the right to use or resell the goods, (ii) replace them with equivalent non-infringing goods, (iii) modify them so they become non-infringing but equivalent, or (iv) remove them and refund the purchase price. If a claim, suit or action is based on a design or specification furnished by Purchaser or on the performance of a process not recommended in writing by Seller, or on the use or sale of the goods delivered hereunder in combination with other goods not delivered to Purchaser by Seller, Purchaser shall indemnify and hold Seller harmless.
14. **Arbitration:** The parties agree that any dispute hereunder shall be resolved by binding arbitration in either Mercer or Burlington Counties, New Jersey before the American Arbitration Association pursuant to its rules for commercial arbitration. The award of the arbitrators shall be final and judgment on such award may be entered in any court of competent jurisdiction.
15. **ACKNOWLEDGMENT OF ARBITRATION.** The seller understands that this agreement contains an agreement to arbitrate. After signing this document or acceptance of the purchase order, the seller

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understands that the seller will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, we agree to submit any such dispute to an impartial arbitrator.

16. **Applicable laws:** These Standard Terms and Conditions, and any agreement resulting from the same, shall be governed by and construed in accordance with the laws of the State of New Jersey. Without limiting the generality of the arbitration provisions of this Agreement, Seller consents to personal jurisdiction and venue in state or federal court in Mercer or Burlington Counties, New Jersey, for purpose of entry of any arbitration award or for purposes of resolving any disputes hereunder.
17. **Severability:** In the event that any provision of these Standard Terms and Conditions and/or any resulting agreement or contract is found to be illegal or unenforceable, the remaining provisions shall remain in full force and effect.
18. **Waiver:** Failure by either party to require compliance with any provision of these Standard Terms and Conditions shall not constitute a waiver of the right to later enforce in full that or any other portion of these Standard Terms and Conditions..
19. **Assignment:** No obligation or right of the parties hereunder may be assigned without the other party's prior written consent.
20. **Notice:** All notices required to be provided for shall be made in writing and hand delivered or sent by first class mail to the address provided by the Seller on the purchase order. All notices required to be provided to Purchaser shall be sent by certified mail, addressed to Purchaser at 140 Stokes Avenue Trenton, New Jersey 08638, or to such other address which Purchaser may hereafter specify to Seller in writing.
21. **Complete agreement / amendment:** The terms and conditions stated under these Standard Terms and Conditions constitute the full and final expression of the parties' agreement with respect to the subject matter hereof. No statements or agreements, oral or written, made prior to the date hereof shall vary or modify these written terms and no modification, amendment, waiver or release of any provision shall be effective unless in writing, signed by both parties, with a specific statement that it is intended as an amendment to a specified agreement or contract.
22. **Attorney's fees:** In the event that of a dispute hereunder, the substantially prevailing party shall be entitled to an award of its reasonable attorneys from the other party.

Kinetics Industries, Inc.

Legal – Purchasing Terms 082513-SS