

TERMS AND CONDITIONS

ThyssenKrupp Materials DBA: Ken-Mac Metals

1. **ENTIRE CONTRACT.** THE TERMS AND CONDITIONS SET FORTH BELOW AND ON THE FACE SIDE HEREOF CONSTITUTE THE EXPRESSION OF ALL THE TERMS OF THIS AGREEMENT AND A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN BUYER AND KEN-MAC METALS, INC. ("SELLER"). ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS BY ANY AGENT OR EMPLOYEE OF SELLER THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS HEREOF SHALL BE GIVEN NO EFFECT OR FORCE. Any additional, contradictory or different terms contained in any initial or subsequent order or communication from Buyer pertaining to the Goods described on the face hereof are hereby objected to. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection. All orders are subject to the approval by Seller at its offices in Cleveland, Ohio. No waiver or alteration of terms herein shall be binding unless in writing and signed by an executive officer of the Seller.
2. **PRICE.** All prices are F.O.B. Seller's plant, Cleveland, Ohio, unless otherwise specifically set forth on the face side hereof. Prices stated are subject to change without notice in the event of: (i) alterations in specifications, quantities, designs, or delivery schedules; (ii) increases in the cost of fuel, power, material, supplied, or labor; and/or (iii) foreign or domestic legislation enacted by any level of government, including tax legislation, which increases the cost of producing, warehousing, or selling the Goods purchased hereunder. No discount will be allowed unless specifically set forth on the face side hereof. Buyer agrees to pay a delinquency charge of 1½% per month, or if such rate shall exceed the maximum rate allowed by applicable law, then a delinquency charge calculated at such maximum rate, on the outstanding balance not paid when due, from the date such balances were due until payment with respect thereof is made in full. Until the purchase price and all other sums due pursuant hereto are paid in full, Seller retains a security interest in the Goods described on the face hereof and in all proceeds of said Goods. Buyer shall execute financing statement(s) on request and irrevocably authorizes Seller to execute and file same.
3. **WARRANTY.** Seller warrants that the Goods manufactured by it will be free from defects in material and workmanship for one (1) year following the date of shipment. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE NOT EXPRESSLY SET FORTH HEREIN. NO AFFIRMATION OF SELLER, BY WORDS OR ACTION, OTHER THAN AS SET FORTH IN THIS WARRANTY CLAUSE SHALL CONSTITUTE A WARRANTY. GOODS WHICH MAY BE SOLD BY SELLER BUT WHICH ARE NOT MANUFACTURED BY SELLER ARE NOT WARRANTED BY SELLER, BUT ARE SOLD ONLY WITH THE WARRANTIES, IF ANY OF THE MANUFACTURERS THEREOF. Seller's warranty does not apply to any Goods which have been subjected to misuse, mishandling, misapplication, neglect, accident, improper installation or modification (including but not limited to use of unauthorized parts or attachments).
If any of the Goods are found by Seller to be defective, such Goods will, at Seller's option, be replaced or repaired at Seller's cost or Seller will refund the purchase price or give Buyer a reasonable allowance thereof. The parties hereto expressly agree that Buyer's sole and exclusive remedy against the Seller shall be for the repair or replacement of the defective Goods or the refund of the purchase price or allowance thereof. Buyer hereby agrees that this exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Seller is willing and able to repair or replace defective Goods in the prescribed manner or refund the purchase price or give Buyer an allowance thereof.
Any claim by Buyer with reference to the Goods sold hereunder shall be deemed waived by the Buyer unless submitted in writing to Seller within the earlier of (i) 30 days following the date Buyer discovered, or by reasonable inspection should have discovered, any claimed breach of the foregoing warranty, or (ii) 90 days following the date of shipment. Any cause of action for breach of the foregoing warranty shall be brought within one year from the date of alleged breach was discovered or should have been discovered, whichever occurs first.
4. **LIMITATION OF LIABILITY.** SELLER'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR STRICT LIABILITY) FOR ITS GOODS SHALL BE LIMITED TO REPAIRING OR REPLACING PARTS FOUND BY SELLER TO BE DEFECTIVE, OR AT SELLER'S OPTION, TO REFUNDING THE PURCHASE PRICE OF SUCH GOODS OR PARTS THEREOF. At Seller's request, Buyer will send, at Buyer's sole expense, any allegedly defective parts to Seller's plant.
5. **DISCLAIMER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES.** IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, BREACH OF ANY OBLIGATION IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HEREWITH. Consequential damages for purposes hereof shall include, without limitation, loss of use, income or profit, or losses sustained as the result of injury (including death) to any person, or loss of or damage to property (including, without limitation, property handled or processed by the use of the goods). Buyer shall indemnify Seller against all liability, cost or expense which may be sustained by Seller on account of any such loss, damage or injury.
6. **ACCEPTANCE AND TRANSPORTATION.** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any claim or shortages of or defects in the Goods within forty-eight (48) hours after receipt of shipment, such Goods shall be deemed finally inspected, checked and accepted by Buyer.
In the absence of shipping and packing instructions, Seller shall use its own discretion in choice of carrier and method of packing. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expense and valuation.
7. **TITLE AND RISK OF LOSS.** Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Seller to carrier, and any claims for losses or damages shall be made by Buyer directly to carrier.
8. **CREDIT TERMS.** All orders and shipments shall at all times be subject to the approval of the Seller's Credit Department. The Seller reserves the right to decline to make shipment whenever, for any reason, there is doubt as to Buyer's financial responsibility and Seller shall not in such event be liable for breach or nonperformance of this contract in whole or in part.
9. **TAXES.** Unless otherwise specifically provided on the face thereof, the price for the Goods purchased is net and does not include sales, use, excise or similar taxes, whether federal, state or local. The amount of any such taxes applicable to the Goods shall be paid by Buyer in the same manner and with the same effect as if originally included in the purchase price.
10. **PACKAGING.** Prices stated are based on Seller's standard packaging. Seller reserves the right of packaging the Goods in pallets, bulk or individual cartons. Packaging will be standard commercial and acceptable to commercial carrier. Special customer packaging will be furnished only when specified and so stated herein, and the cost thereof shall be borne by Buyer.
11. **DELAYS.** Unless expressly specified to the contrary, Goods in stock will be shipped immediately, and Goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Seller will not be liable for any damage, loss, fault, or expense arising out of delays in shipment or other nonperformance of this Agreement caused by or imposed by: (a) strikes, fires, disasters, riots, acts of God, (b) acts of Buyer, (c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action, (e) subcontractor delay, or (f) any other cause of condition beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.
12. **TERMINATION, CANCELLATION AND CHANGES.** Orders cannot be terminated, cancelled or modified, or shipment deferred after acceptance of Buyer's order by Seller, except with Seller's written consent and subject to conditions then agreed upon which shall indemnify Seller against liability and expense incurred and commitments made by Seller and which shall provide for profit on work in process and contract value of products or parts completed and ready for shipment.
Seller assumes no responsibility for any changes in specifications, unless such changes are confirmed in writing by Buyer and Accepted in writing by Seller.
13. **PATENTED PROCESS.** The purchase of the Goods does not entitle Buyer to employ the same with any patented process owned by Seller or others.
14. **PATENT INFRINGEMENT.** Except in the case of articles, materials and designs furnished or specified by Buyer, Seller, at its own expense, shall defend any suit brought against Buyer on the ground that use of the Goods furnished hereunder by Seller infringes any United States Letters Patent existing on the date of this agreement, and shall pay the amount of any judgement that may be awarded against Buyer in any such suit, provided and upon condition that Buyer shall have made all payments due under this agreement and shall (i) promptly deliver to Seller all infringement notices and other papers received by or served upon Buyer, (ii) permit Seller to take complete charge of the defense of such suit and to compromise the same, if deemed advisable, and (iii) assist in every reasonable way in the conduct of such defense.
In the event that Buyer shall be enjoined by a court of competent jurisdiction from which no appeal can be taken from using the Goods for the intended purpose on the ground that use of the Goods infringes any such United States Patent, or if it is established to Seller's satisfaction, upon due investigation, that use of the Goods infringes any such United States Patent, Seller at its option, may either (i) procure for Buyer a license to continue using the Goods, (ii) modify the Goods so as to make them noninfringing without seriously impairing its performance, (iii) replace the Goods with goods which are substantially the equivalent but noninfringing, or (iv) remove the Goods from Buyer's plant, in which event Seller shall refund to Buyer the purchase price less depreciation at the rate of 20% per year. The foregoing sets forth Seller's entire liability to Buyer for patent infringement based on the possession and use of the Goods by Buyer. Seller shall have no obligation whatsoever arising out of any patent infringement claims directed to a process or a method.
Buyer agrees to defend and indemnify Seller against any claims or liabilities, for, or by reason of, the infringement of any United States Patent arising from manufacture of any of the Goods in accordance with specifications furnished by Buyer or from the sale thereof. At Seller's request, Buyer shall give Seller complete charge of the defense of such suit and to compromise the same and Buyer shall indemnify Seller for the costs thereof.
15. **ADDITIONAL CHARGES.** If substitute or additional Goods, or repair parts, are purchased by Buyer from Seller, the terms and conditions of this contract shall be applicable thereto, the same as if such substitute or additional Goods or repair parts had been originally purchased hereunder.
16. **EQUIPMENT AND MATERIAL USED EXCLUSIVELY FOR MANUFACTURE OF BUYER'S GOODS.** Any equipment (including jigs, dies, and tools, but excluding patterns) which Seller constructs or acquires for use exclusively in the production of Goods for Buyer shall be and shall remain Seller's property and Seller may include a reasonable charge for the use of such equipment in the price of Goods. All such equipment will be used exclusively for the manufacture of Goods for Buyer. Any materials or equipment owned or furnished by Buyer will be carefully handled and stored by Seller while in Seller's possession, but Seller shall have no responsibility or liability for loss or damage thereto.
If no orders are received from Buyer for Goods to be made with equipment or materials referred to in the foregoing paragraph for three consecutive years, Seller, after giving Buyer thirty days written notice, may make such disposition thereof as Seller desires without liability to Buyer.
17. **GENERAL CONDITIONS.** No agent, salesman or other party is authorized to bind Seller by any agreement, warranty, statement, promise or understanding not herein expressed.
The sale of Goods pursuant to this order shall be governed by the laws of the State of Ohio.
In addition to the rights and remedies conferred upon Seller by law, Seller shall not be required to proceed with the performance of any order or contract, if Buyer is in default in the performance of any order or contract with Seller, and in case of doubt as to Buyer's financial responsibility, shipments under this order may be suspended or sent sight draft with bill of lading attached by Seller.
Any clerical errors are subject to corrections.
No delay or omission by Seller is exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy and shall not be constituted as a bar or a waiver of any such right or remedy on any future occasion.
This contract shall be binding upon and shall inure to the benefit of the successors, and assigns of Buyer and Seller, provided, however, that Buyer may not assign or transfer this contract, in whole or in part, except upon the prior written consent of Seller.
18. **ENTIRE CONTRACT.** Upon Seller's acceptance of Buyer's order, the terms and provisions set forth herein shall constitute the entire agreement between Buyer and Seller and no statement, correspondence, sample or other terms shall modify or affect the terms hereof.