887743

TERMS AND CONDITIONS OF SALE

Please review these Terms and Conditions and notify Kopp immediately of any objections. These Terms and Conditions are binding with respect to the sale unless we agree otherwise, in writing.
DEFINITIONS. "Buyer" as used herein shall mean the purchaser of goods and/or services from Kopp Glass, "Seller" shall mean Kopp Glass, Inc., "Product" shall mean goods purchased by Buyer and shall include the plural, "Service" shall mean services purchased by Buyer and shall include the plural.

1. SHIPMENTS. Shipment quantities may vary (-20% / +20%) from quantity specified on the order and shipment within these parameters shall be considered satisfaction in full of the order.

2. BLANKET ORDERS. Seller reserves the right to modify pricing on all blanket orders if warranted by a change in business conditions. Buyer must provide Seller with firm shipping instructions (quantities, ship dates and destination) for all Products ordered under a blanket purchase order so that all Products under the order are shipped within one year of the date that the order is received by Seller. Time shall be of the essence. Buyer agrees that any goods produced by Seller pursuant to a blanket purchase order that have not been shipped within one year after the order is received may be immediately invoiced to Buyer by Seller, and that payment shall be due in 30 days. Thereafter, Seller may, at its option, either resell or otherwise dispose of such goods without further liability to Buyer.

3. PAYMENTS. Payments shall be made at par in legal tender of the United States of America within 30 days of invoicing unless otherwise advised by Seller. Each shipment is a separate sale.

   If Buyer fails to pay in full within such period, Seller may, at its sole discretion, withhold any future shipment, retain any moulds or tooling supplied by Buyer, and/or cancel the unperformed portion of the contract. Should Buyer fail to make payment in full within such thirty day period or within some other time agreed upon between the parties, Buyer shall pay to Seller a service charge on the unpaid balance in the amount of 1-1/2% per month.

   Failure on the part of Buyer to make full payment on all sums due to Seller shall constitute a material breach of these Conditions of Sale by Buyer. Seller may, at its sole discretion, thereafter proceed to exercise any or all of Seller's remedies for breach of these Terms and Conditions and under applicable law. Buyer agrees to reimburse Seller for all expenses, including legal fees and costs incurred by Seller in connection with collection efforts against Buyer.

4. TITLE AND RISK OF LOSS. The Products are shipped F.O.B. place of shipment. Title to and risk of loss of Product will pass to Buyer upon delivery of the Product to the carrier.

5. FORCE MAJEURE. Seller will be excused from the obligations of this contract to the extent that performance is delayed or prevented by any circumstances reasonably beyond its control or by fire, explosion, mechanical breakdown, strikes or other labor troubles, plant shutdown, unavailability of or interference with the usual means of transporting Product or compliance with any law, regulation or request of any governmental authority. The occurrence of a Force Majeure event shall act to suspend performance. Either party shall have the right to terminate any unperformed portion of the contract as a result of a Force Majeure situation. However, the duty of the Buyer to pay for Product or Service received is never suspended.

6. WARRANTY. Seller warrants that the Product sold shall conform to its specifications. In the case of Services only, Seller will use its best efforts to provide such Services in a professional and timely manner. However, SELLER DOES NOT WARRANT OR GUARANTEE THAT ANY DESIGN OR OTHER SERVICE WILL PROVIDE A SUITABLE SOLUTION FOR BUYER. BUYER IS SOLELY RESPONSIBLE FOR TESTING ANY DESIGN OR OTHER SERVICE SUPPLIED BY SELLER. THERE IS NO WARRANTY THAT GOODS OR SERVICES SUPPLIED HEREUNDER SHALL BE FIT FOR ANY PARTICULAR PURPOSE NOR IS THERE ANY WARRANTY OF MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY PROVIDED HEREIN. EXPRESS OR IMPLIED WARRANTIES BASED ON ANY SAMPLE, MODEL OR PROTOTYPE ARE EXPRESSLY DISCLAIMED.

7. REMEDIES. Seller's liability and Buyer's sole and exclusive remedy for any claims arising by reason of this transaction, whether based in contract, negligence or other tort, strict liability or breach of warranty is limited to the value of the Product shipped or replacement of Product not conforming to specifications. In the case of Services, Buyer's sole and exclusive remedy is limited to the correction of any deficiencies in Service, and in the unlikely event that Seller is unable to correct any deficiency, Buyer is entitled to a refund of the amount paid for the deficient portion of Service. All claims involving product specifications are waived unless made in writing within 30 days of Buyer's receipt of the Product. SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT OR CONSEQUENTIAL DAMAGES, OR EQUIVALENT THEREOF NO MATTER HOW CLAIMED, COMPUTED OR CHARACTERIZED, INCLUDING WITHOUT LIMITATION, ANY DAMAGES RELATED TO LABOR, DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF RETURN ON INVESTMENT, COST OF CAPITAL, LOSS OF OPERATING TIME OR PRODUCTION, LOSS OR REDUCTION OF USE OR VALUE OF ANY FACILITIES, EXPENSE OF REPLACEMENT PRODUCTS OR POWER, OR INCREASED COSTS OF OPERATIONS OR MAINTENANCE, ARISING OUT OF OR IN CONNECTION WITH ANY BREACH OF WARRANTY OR NONCONFORMANCE OR DEFECT IN THE PRODUCT, REGARDLESS OF WHETHER SUCH LIABILITY SHALL BE CLAIMED IN CONTRACT, WARRANTY, EQUITY, TORT OR OTHERWISE.

8. TECHNICAL INFORMATION. Any information given by Seller for the use of any Product is believed to be reliable, but Seller MAKES NO WARRANTIES OR REPRESENTATIONS WHETHER EXPRESS OR IMPLIED, OF THE RESULTS TO BE OBTAINED BY BUYER.

9. PROPRIETARY INFORMATION. Buyer acknowledges that Seller's protocols, drawings, data, blueprints, memoranda, correspondence, flow charts, production and laboratory information, engineering technology, production methods and processes, instrumentation, specifications, formulas, identity and involvement of research personnel, sales and market information, business plans, process designs, operating know-how, or other intellectual property or its physical embodiments are confidential and proprietary and agrees to be bound by the terms of our Confidentiality and Non-Disclosure Agreement, which are incorporated herein.

10. OWNERSHIP OF MATERIALS, GOODS AND DESIGNS. Buyer acknowledges that Seller's products are specially manufactured goods, that its designs are unique to Seller and that all products, compositions, moulds or mould designs, prototypes, and any other tools or schematics used by Seller (regardless of the source of funds to produce these items) in connection with Buyer's order are the Seller's sole exclusive proprietary developments and shall not leave the Seller's premises or be used by anyone other than the Seller without the Seller's express, written consent.

11. DAMAGE. Seller's Products are inspected and delivered to the carrier, properly packed in good condition. Do not accept shipment if packages are damaged, or short of number shown herein, or on bill of lading, until the carrier notes their condition on your freight bill. Unpack carefully within 24 hours; if any goods

in perfect packages are damaged, ask carrier to inspect immediately for this concealed damage. Also secure from him a carrier's statement of concealed damage, fill out a file claim forthwith with carrier against whom claim for damage or non-delivery must be made within thirty days of shipping date. Instruct your receiving department to follow this practice closely, as we cannot assume responsibility for Products after delivery to carrier (when reporting claims please refer to our invoice number and date.)

12. RETURNS. All product returns must be shipped by a shipper and method approved by Seller. All product returns to Seller pursuant to #7 above must have a Return Authorization Number (RAN) on each packing slip and be clearly affixed to each carton or container that is shipped to Seller. Returns must be received within 30 days of RAN issuance. All others will be rejected and returned to Buyer at Buyer's cost. A separate RAN must be issued for each item being returned to Seller. RANs are issued only by the Quality Control Department of Seller. Issuance of a RAN by Seller does not constitute agreement by Seller that Products being returned are nonconforming. Buyer agrees that by accepting Products accompanied by a valid RAN, Seller is merely agreeing to reinspect products for conformance, and that any credit memoranda issued by Seller prior to reinspection of Product is conditioned on final determination by Seller that products are nonconforming. Credit Memoranda can only be finalized after products have been reinspected. Any products returned to Seller by Buyer pursuant to the foregoing that are found to be conforming after reinspection by Seller will be immediately reshipped and reinvoiced (if necessary) to Buyer along with any return freight charges paid by Seller on Products that were conforming. Any such invoices will be immediately due and payable on receipt.

13. ACCEPTANCE. If these Terms and Conditions are construed to be part of an offer, then such offer expressly limits acceptance to the terms of the offer and notice of objection to any different or additional terms in any response to the offer is hereby given. If these Terms and Conditions are construed to be part of an acceptance to the terms of an offer, this acceptance is expressly conditioned upon Buyer's assent to any different or additional terms contained herein. Buyer's acceptance of the Product shall constitute its assent to these Terms and Conditions.

14. ASSIGNMENT. The rights and obligations in this contract may not be assigned by the Buyer without the written consent of Seller.

15. MODIFICATION. This document contains the entire agreement of the parties and all proposals, negotiations and representations, if any, made prior to and concerning this contract are merged herein. Any subsequent modifications to this contract shall be at the discretion of Seller, must be in writing stating an intention to modify the agreement and signed by an authorized representative of Seller.

16. GOVERNING LAW. This contract will be governed by the laws of the Commonwealth of Pennsylvania (without giving effect to any applicable rules regarding choice of law), including the provisions of the Uniform Commercial Code in effect in Pennsylvania except as modified by these terms and conditions. The application of the United Nations Convention on Contracts for the International Sale of Goods ("CISG") is hereby expressly disclaimed.

17. DISPUTES. Any and all claims or disputes shall be brought and resolved as follows:

    (a) Transactions between Seller and a Buyer headquartered in the United States: Any and all claims or disputes arising out of the transaction shall be brought exclusively either in the Court of Common Pleas of Allegheny County, Pennsylvania or in the US District Court for the Western District of Pennsylvania, and Buyer consents to venue in one of those courts.

    (b) Transactions between Seller and a Buyer headquartered outside of the United States: Any and all claims or disputes arising out of the transaction shall be settled exclusively by arbitration under the Rules of the International Centre for Dispute Resolution by one arbitrator chosen by mutual agreement of the parties. In the event the parties cannot agree on the selection of the arbitrator, either party may file a written application to have an arbitrator designated by a judge sitting in the Court of Common Pleas of Allegheny County, Pennsylvania. The place of arbitration shall be in Pittsburgh, Pennsylvania. The language to be used in the arbitration proceedings shall be English. IBA Rules on Taking of Evidence in International Commercial Arbitration shall apply to the arbitration proceedings. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The costs of the arbitration, including filing fees and the arbitrator's expenses, if any, shall be borne equally between by the parties. Each party shall bear any additional expenses as such party may incur, including attorney's fees, but the arbitrator may award attorney's fees, costs and expenses to the prevailing party. The arbitration shall be final and enforceable as to both parties.

18. FAIR LABOR STANDARDS ACT. The Product covered herein shall be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

19. Seller is an Equal Employment Opportunity Employer.