

TERMS AND CONDITIONS OF SALE

Agreement. All sales by Kendrion (Shelby) Inc. (“Kendrion (Shelby)”) are governed by and subject to these terms and conditions, as amended from time to time by Kendrion (Shelby). These standard terms and conditions form a binding agreement between the original purchaser of Goods (the “Customer”) and Kendrion (Shelby) (the “Agreement”). This Agreement incorporates all additional terms and conditions stated in quotations, pricelists, invoices, order acknowledgments and other documentation furnished by Kendrion (Shelby) to Customer (“Additional Terms”). These standard terms and conditions govern in the event of any conflict or inconsistency with any Additional Terms. There are no other terms of agreement. Any changes to this Agreement are binding and enforceable only if made in writing and signed by the authorized officer of Kendrion (Shelby). Kendrion (Shelby) rejects any terms or conditions contained in Customer’s purchase order or other documents that are additional to or in conflict or inconsistent with this Agreement, and any such terms or conditions shall be without force or effect. If Customer has not otherwise agreed to these terms, Customer’s acceptance of delivery of, or full or partial payment for, the Goods will constitute Customer’s acceptance of these terms and conditions.

Orders. All orders for products or services sold by Kendrion (Shelby) (together “Goods”) must be in the form of a purchase order. All purchase orders are subject to final acceptance by Kendrion (Shelby). Following acceptance by Kendrion (Shelby), purchase orders may not be changed or canceled without the prior written approval of Kendrion (Shelby). Customer may request change to or cancellation of a purchase order by submitting a written request to Kendrion (Shelby). Customer shall reimburse Kendrion (Shelby) for all expenses and losses resulting from any change or cancellation. In the event of any suspension of payment or the institution of any proceedings by Kendrion (Shelby) against Seller, or the initiation of voluntary or involuntary proceedings in bankruptcy or insolvency proceedings, or proceedings under any provisions of the United States Bankruptcy Code in which Customer is a debtor, or for the appointment of a receiver or a trustee or an assignee for the benefit of creditors, Kendrion (Shelby) shall be entitled to cancel the order or any subsequently entered into agreement forthwith, without liability to Customer for loss of anticipated profits or otherwise.

Prices. The prices for Goods are those as specifically quoted by Kendrion (Shelby). Except as otherwise stated in writing by Kendrion (Shelby), quoted prices are subject to change by Kendrion (Shelby) without notice until an order acknowledgement has been issued by Kendrion (Shelby), excepting an increase in price based on an increase of raw material prices of more than 10 percent per quarter may be made at any time before product delivery. Prices quoted are exclusive of packaging/shipping and taxes, including without limitation, sales, excise, use and property taxes. Customer agrees to pay all applicable taxes or charges.

Payment Terms. Full payment for all Goods is due in accordance with the terms and payment procedures stated in the invoice issued by Kendrion (Shelby) to Customer. All payments shall be made in U.S. Dollars. Invoices not fully paid by the specified payment date are deemed overdue, and unpaid balances will accrue interest at the rate of 18% per annum or at the highest rate permitted by law, if lower. Kendrion (Shelby) will be entitled to suspend performance of any order or obligation to Customer until the Customer’s account is current. If at any time Kendrion (Shelby) determines in its sole discretion that Customer’s financial condition, payment practices or credit rating does not justify a sale on credit, Kendrion (Shelby) may require advance payment or such other payment assurances as it may deem acceptable in its sole discretion, and it may cancel any order without recourse by Customer. Customer will reimburse Kendrion (Shelby) for all expenses, including reasonable attorney and paralegal fees, incurred to collect any delinquent account, enforce its rights under this Agreement, or pursue any lawsuit, arbitration, or other proceeding related to this Agreement.

Title to Goods. Title to and risk of loss of the Goods will pass to Customer upon delivery of the Goods to the carrier at Kendrion (Shelby)’s place of business. Customer grants Kendrion (Shelby) a security interest in the Goods and will keep the Goods properly stored, insured and identifiable as subject to Kendrion (Shelby)’s lien until full payment is made by Customer for the Goods. Customer agrees that Kendrion (Shelby) may enter Customer’s premises to repossess Goods for which payment is overdue and file financing statements to reflect its lien in the Goods.

Delivery and Delay. Kendrion (Shelby) will deliver Goods to Customer FOB at Kendrion (Shelby)’s place of business within a variance of 10 percent. Delivery dates specified in a quotation or order acknowledgment are estimates only and time is not of the essence. Customer assumes the risk of loss of Goods once delivered to the carrier (the “Shipping Date”) or ten (10) days after Kendrion (Shelby) notifies Customer that the Goods are ready for pick-up. Kendrion (Shelby) may deliver all of the Goods at one time or in portions from time to time. All deliveries are subject to modifications or cancellation due to events beyond Kendrion (Shelby)’s reasonable control, including without limitation acts of God, compliance with any law, order, rule or regulation of any governmental or other authority, disruption of suppliers, delay in transportation, labor disputes, strikes, failure of equipment or systems, or shortages of any labor or materials or services (“Force Majeure Events”). Kendrion (Shelby) will not be liable for any loss of profit or property, or for any direct, indirect, special, incidental, consequential or other damages caused by any delay or failure to deliver. If Customer causes or requests a delay in the manufacture or delivery of any Goods, Customer will reimburse Kendrion (Shelby) for all resulting damages, including without limitation reasonable storage expenses. Customer shall acquire and maintain sufficient property and casualty insurance to cover any loss or risk of loss to any Goods.

Limited Warranty. Kendrion (Shelby) provides a Standard Product Limited Warranty (the “Warranty”) to the original Customer only. The Customer has no rights under this Warranty unless and until Kendrion (Shelby) receives full payment of the purchase price of the Goods. Subject to the terms, conditions and limitations contained herein, Kendrion (Shelby) warrants its Goods against defective materials and workmanship for one (1) year from the Shipping Date. Kendrion (Shelby), in its sole discretion and at its option, will repair or replace parts, assemblies, or subassemblies, or make a pro rata refund of the initial purchase price related to the defect. There is no other warranty. Customer shall prepay all shipping costs, taxes, duties, or other charges related to returning Goods to Kendrion (Shelby) and Customer. All specifications set forth in Kendrion (Shelby) quotations, order acknowledgments, or other documentation remain subject to tolerances and variations consistent with usage of trade and remain approximate, including dimension, weight, and other details.

Exclusions from Warranty Coverage. The Warranty extends only to the Customer. The Warranty does not extend, and it is not transferable or assignable, to any subsequent purchaser or user, without the express written consent of Kendrion (Shelby). The Warranty shall not apply to any claimed defect in or damage to the Goods arising out of or being caused by natural occurrences or disasters, corrosive products or natural conditions, deliberate or negligent acts, misuse, abuse, damage caused by or during transportation or storage, or improper or inadequate maintenance, or improper incorporation into equipment or other products by the Customer.

Notice of Claim. No repair, pro rata refund, or other remedy will be required or made unless Kendrion (Shelby) receives written notice of the claimed defect. Any claim of defect, including without limitation under the Warranty, must be made in writing to Kendrion (Shelby) within the one (1) year warranty period and within thirty (30) days following discovery of the claimed defect; provided, however, that obvious or materials defects, or defects that an inspection of the Goods would reveal, must be submitted in writing within thirty (30) days of the Shipping Date. Written notice shall be provided to Kendrion (Shelby) Inc., Attention: Customer Service, 1100 Airport Road, Shelby, North Carolina 28150. The written notice shall describe the defect and provide the customer’s name, address, and the address and location of the anodized product. Failure to give notice of a claimed defect as required herein shall constitute an absolute waiver and release of all claims Customer may have, and Kendrion (Shelby) shall have no liability, under this Warranty or otherwise, for that claimed defect. As a condition to the enforcement of any claim under this Warranty, Kendrion (Shelby) and its agents must be provided access to the original Goods for inspection, testing, repair, and/or remedy. The product must remain unmodified for Kendrion (Shelby) inspection and testing. Any modification, replacement, attempted repair, self-help, or alteration of the Goods, or other product into which the Goods are incorporated, without Kendrion (Shelby) prior approval or before Kendrion (Shelby) inspects or tests the Goods shall render any warranty and claim null and void. Customer shall not withhold or reduce payments on account of claims not accepted by Kendrion (Shelby).

Credits & Chargebacks. Claims for credits and chargebacks will be considered by Kendrion (Shelby) only if (a) received by Kendrion (Shelby) within thirty (30) days of the Shipping Date, and (b) submitted to Kendrion (Shelby) in writing with a complete description identifying the specific Goods and the reason that Customer is claiming the credit or chargeback. Credits and chargebacks may be denied by Kendrion (Shelby) in Kendrion (Shelby) sole discretion.

LIMITATIONS ON LIABILITY. THE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. THE REMEDY OF REPAIR, REPLACEMENT, OR REFUND PROVIDED UNDER THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES. FAS CONTROLS SHALL HAVE NO LIABILITY TO THE CUSTOMER OR ANYONE ELSE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION PERSONAL INJURY, DEATH, PROPERTY DAMAGE, LOST PROFITS, LABOR COSTS, OR ANY OTHER PECUNIARY DAMAGE, WHETHER DUE TO ANY DEFECT IN THE GOODS, BREACH OF THIS AGREEMENT, DELAY, NON-DELIVERY, NON-PERFORMANCE, RECALL, OR ANY OTHER REASON. ALL CLAIMS IN TORT, STRICT LIABILITY, AND FAILURE OF ESSENTIAL PURPOSE ARE WAIVED, RELEASED, AND EXCLUDED, INCLUDING CLAIMS OF FAS CONTROLS'S NEGLIGENCE. EXCEPT FOR THE LIMITED WARRANTY HEREIN, THE CUSTOMER ACCEPTS THE GOODS "AS IS" WITH ALL FAULTS AND ASSUMES THE RISK OF LOSS FOR ANY DEFECT OR NONCONFORMITY. CUSTOMER WAIVES, RELIEVES AND RELEASES KENDRION (SHELBY) FROM ANY AND ALL CLAIMS, CAUSES OR RIGHTS OF ACTION, AND LIABILITY FOR ANY REDHIBITORY, PATENT, OR LATENT VICES OR DEFECTS IN THE GOODS EXCEPT AS SPECIFICALLY PROVIDED IN THE LIMITED WARRANTY. UNDER NO CIRCUMSTANCES SHALL Kendrion (Shelby)'S LIABILITY FOR ANY DEFECT IN THE GOODS, WHETHER BASED ON CONTRACT, TORT, WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY, EXCEED THE PURCHASE PRICE OF THE GOODS. THERE ARE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT. **CUSTOMER ACKNOWLEDGES THAT THESE LIMITATIONS AND WAIVERS HAVE BEEN BROUGHT TO ITS ATTENTION, THAT CUSTOMER HAS READ AND UNDERSTANDS ALL TERMS AND AGREES TO BE SO BOUND, AND THAT CUSTOMER'S RECEIPT OF THE AGREEMENT AND GOODS, AND ANY PAYMENT FOR THESE, SIGNIFIES THAT CUSTOMER HAS VOLUNTARILY AND KNOWINGLY CONSENTED TO ALL TERMS, INCLUDING THESE WAIVERS AND LIMITATIONS.**

Modifications. No person at Kendrion (Shelby) other than its vice-president, president, managing director or secretary has the authority to modify, expand or extend the Warranty, to waive any of the limitations or exclusions of the Warranty, to make any different or additional warranties with respect to any Goods, or to alter, amend, or undo any term of sale. Any such alteration is not effective unless stated in writing signed by an authorized officer at Kendrion (Shelby). All other statements and representations are null and void.

Intellectual Property & Confidentiality. Customer acknowledges Kendrion (Shelby) ownership of all trademarks, service marks, copyrights, imprints, rights of publicity, patents, design patents, registered designs, industrial designs, trade dress, product design, trade secrets and other intangible rights relating to the Goods ("Kendrion (Shelby) Intellectual Property") and agrees that Customer shall have no right, title or interest whatsoever in any Kendrion (Shelby) Intellectual Property. Customer shall keep confidential all designs, processes, drawings, and other technical or proprietary information disclosed by Kendrion (Shelby) to Customer.

Period of Limitations. No claim, suit, or other proceeding arising out of or related to the Goods or this Agreement, including without limitation the Warranty, may be brought by Customer after one (1) year from the date it accrues. No discovery, estoppel, or other rule shall apply to extend this limitations period.

Indemnity. Customer agrees to indemnify and hold Kendrion (Shelby), as well as its officers, agents, employees, and representatives, harmless from and against all claims, causes of action, liabilities, losses, damages, judgments, and proceedings, whether based in contract, quasi-contract, subrogation, tort, strict liability, or any other legal or equitable theory, including without limitation all expenses, costs, damages or injury to person or property, and attorney fees incident thereto, arising from or relating to the use, handling, storage, transportation, possession, processing, fabrication, resale, or any other activity involving the Goods after risk of loss has passed to Customer, or relating to any extension or attempt to extend Kendrion (Shelby) Warranty to anyone other than Customer. At Kendrion (Shelby) request, and subject to Kendrion (Shelby) sole discretion to choose its own counsel, Customer shall also defend Kendrion (Shelby) from any such claims, causes of action, or proceedings.

Applicable Law. This Agreement shall be considered to have been made in the State of North-Carolina and shall be governed by and interpreted according to the law of North-Carolina, without giving effect to conflict of law principles. Except as provided below, any action or claim arising out of or relating to the Agreement may be brought only in a federal or state court in Charlotte, North-Carolina, having jurisdiction over the subject matter, and Customer irrevocably consents that such court shall have personal jurisdiction over Customer and waives any objection that the court is an inconvenient forum. Alternatively, and at Kendrion (Shelby) sole election, any dispute arising out of or relating to this Agreement shall be submitted to binding arbitration in Charlotte, North Carolina, in accordance with the rules of the American Arbitration Association. Any award ordered in such arbitration shall be enforceable in any court of competent jurisdiction. In the event any suit is brought against Kendrion (Shelby) by Customer in violation of this Agreement or for claims waived or released under the Agreement, Customer agrees to pay Kendrion (Shelby) attorney and paralegal fees as well as costs to defend such suit.

Independent Contractor. Kendrion (Shelby) is an independent contractor under this Agreement. Nothing in this Agreement shall be deemed to make Kendrion (Shelby) or its employees or agents an employer, employee, partner or joint venture of Customer.

Miscellaneous. If any provision or individual term of this Agreement is invalid or unenforceable under any applicable law, the provision or term shall be ineffective to that extent and for the duration of the illegality, but the remaining provisions and terms shall be unaffected. Customer shall not assign any of its rights nor delegate any of its obligations under this Agreement without the prior written consent of Kendrion (Shelby). This Agreement shall be binding upon and enforceable by and against Customer and Kendrion (Shelby), and their respective legal representatives, successors, and assigns.

Kendrion (Shelby) Rights. Kendrion (Shelby) has all rights and remedies given to sellers by applicable law, and Kendrion (Shelby) rights and remedies are cumulative and may be exercised from time to time by Kendrion (Shelby). No waiver by Kendrion (Shelby) of any breach of the Agreement by Customer shall be effective unless in writing nor operate as a novation or waiver of any other breach. Kendrion (Shelby) shall not lose any right because it has not exercised that right in the past.

REMAINDER INTENTIONALLY BLANK