

## TERMS AND CONDITIONS FOR SALES OF GOODS (hereinafter "Terms")

**1. Acceptance.** This Agreement is an offer and expressly limits acceptance to the Terms herein. Sellers hereby objects to any term given by Buyer that does not exactly match these Terms. Seller's acceptance of any offer by Buyer to purchase the Goods is expressly conditioned upon the Buyer's assent to all the Terms herein. Buyer's assent to these Terms shall be conclusively presumed from Buyer's acceptance of all or any part of the Goods or from payment by Buyer for all or any part of the Goods. If Buyer presents additional or different terms and conditions than these Terms, failure of Seller to object to such additional or different terms or conditions is not a waiver of these Terms, and is not an acceptance of any additional or different terms and conditions. None of these Terms may be added to, modified, superseded or otherwise altered, except by a written instrument signed by an authorized executive of Seller.

**2. Payment of Terms.** Payment terms are net thirty (30) days from the date of invoice. Any payments not made within thirty (30) days of the date of invoice shall be subject to a late payment charge of 1½ % per month (compounded) on the unpaid balance of any amount then past due. Buyer shall pay \$35 for any dishonored check. Buyer shall have no right of set-off or withholding. No deduction of any amounts due from Buyer to Seller shall be made without Seller's prior, express written approval. Each truck representing Buyer or Buyer's subcontractor will be weighed at the Seller's scale, or scales found acceptable by Seller prior to entering and leaving Seller's property. Said weight shall be used to calculate the purchase price.

**3. Taxes.** The quoted purchase price may be increased to the extent that Seller's cost of the Goods may be increased as a result of any federal, state or municipal legislation. In addition to paying the quoted purchase price, Buyer is solely liable for any excises, levies or taxes which Seller may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the Goods, and Buyer agrees to pay the amount thereof on the same terms as it shall pay the stated purchase price.

**4. Waste Materials.** To the extent services include waste disposal, this paragraph shall also apply. The term "Waste Material" refers to the nonhazardous solid waste (including recyclable materials) generated by Buyer. "Waste Material" specifically excludes and Buyer agrees not to deposit with Seller, anything other than Waste Material, including without limitation, any radioactive waste containing TENORM as defined in OAC 1701:1-43(x), volatile, corrosive, highly flammable, explosive, biomedical, biohazardous, toxic or infectious materials, or any asbestos, fluorescent light bulbs, tires, petroleum products, Freon, lead batteries, construction waste, or hazardous material, as defined by applicable federal, state, provincial or local laws or regulations, or any Waste Material contaminated with said materials ("Excluded Waste"). Buyer represents and warrants that it will not deposit with Seller any industrial process waste unless Seller approves a Special Waste Disposal Application for such industrial process waste. Buyer agrees that in the event the waste stream (including solidification agents) materially changes from the Waste Material approved by Seller, Buyer will not deposit such waste with Seller until Buyer notifies Seller of the change and receives written approval from Seller. For waste material including drill cuttings, excavated earth, or other materials known to potentially contain naturally occurring radioactive materials, Buyer shall be required to test for TENORM (regardless if such is not required by ODNR or other administrative agency), at Buyer's cost. Buyer represents and warrants all Waste Material will not contain any Excluded Waste. Seller acquires title to the Waste Material when it is deposited with Seller. Notwithstanding anything in this Agreement to the contrary, Buyer retains title to and liability for any Excluded Waste or any combination of Waste Material comingled with Excluded Waste. The phrase "deposit with Seller" used in this paragraph means when waste is placed in Seller's containers or loaded into Sellers trucks or unloaded by Buyer into Seller's landfill or transfer station, as applicable.

### **5. Warranty and Limitation of Liability.**

Seller warrants that all goods, services and work supplied by Seller (collectively referred to throughout as "Goods") shall be of the type stated on the corresponding sales invoice issued by Seller, except as otherwise set forth in these Terms. THE FOREGOING WARRANTY IS SELLER'S SOLE WARRANTY WITH RESPECT TO THE GOODS. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. Buyer waives all warranty claims, if any, related to Goods not raised within 30 days of delivery of such Goods. Buyer is encouraged to test any Goods at Seller's facility, during normal business hours, to confirm the Goods meet Buyer's expectations. Buyer acknowledges it is not relying on Seller to select the Goods or determine the appropriateness of the Goods for Buyer's intended use. Goods purchased on the basis of weight are subject to customary quantity variations recognized by practice in the industry.

Seller's liability to Buyer, whether in contract, in tort, under any warranty, in negligence or otherwise, shall not exceed a sum equal to the amount of the purchase price paid by Buyer for the Goods at issue. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES. The price stated for the Goods is consideration for

limiting Seller's liability. The parties intend the exclusion of consequential damages as an independent agreement apart from the sole and exclusive remedy herein. Buyer's sole remedy, whether in contract, tort, under any warranty, in negligence or otherwise, shall be a refund of the purchase price paid by Buyer or replacement of the Goods, at Seller's election. This remedy is intended to be the sole and exclusive remedy of the Buyer under this Agreement and for any breach of warranty, if any. No action by Buyer, regardless of form, arising out of this transaction, may be brought by Buyer more than one (1) year after the date of this Agreement. Nothing contained in this section is intended to be a warranty extending to the future performance of Goods.

**6. Shipment.** Delivery terms are F.O.B. Seller's plant. Buyer is solely responsible for all shipping costs from Seller's plant. Title to and risk of loss to the Goods shall pass upon pickup at Seller's plant. Buyer shall assume all risk of loss or damage upon delivery by Seller to the carrier at the point of shipment. Scheduled dates of delivery are determined from the date of Seller's acceptance of any order or orders placed by Buyer and are estimates of approximate dates of delivery, not a guaranty of a particular date of delivery. Buyer shall inspect the Goods promptly upon receipt for non-conformity (including but not limited to non-conformity for quantity, quality, and/or defects). Failure by Buyer to provide Seller with written notice of claim within 5 days from the date of delivery or, in the case of non-delivery, from the date fixed for delivery, shall constitute a waiver by Buyer of all claims with respect to, or otherwise related to, such Goods. With respect to any telephone orders, these Terms shall be binding upon receipt, unless Buyer rejects shipment of the Goods.

**7. Security Interest.** Sales of Goods by Seller shall at all times be subject to the approval of and requirements of the credit department of Seller and Seller reserves the right to deny, change or limit the amount or duration of credit to be allowed Buyer. Seller retains a purchase money security interest in all Goods not paid for in full, notwithstanding that the goods have been delivered to Buyer, and Buyer hereby authorized Seller to execute and file financing statements describing the Goods, and other Agreement which may be requested by Seller to evidence its security interest. If any Goods are incorporated as part of real estate or permanent fixtures to real estate, Seller reserves the right to file mechanic's liens.

**8. Indemnification.** In addition to the foregoing, Buyer agrees to release, defend, save and hold Seller harmless from any claims, losses, demands, damages, injuries, including death, liabilities, costs, expenses, or judgments arising in whole or in part, directly or indirectly, to any person, entity or property, arising out of or relating to: (a) the negligence or intentional misconduct of Buyer or Buyer's customers, agents, employees or invitees transportation, storage, possession, purchase or use of the Goods; or (b) Excluded Waste except to the extent directly caused by Seller's gross negligence or intentional misconduct. This indemnification shall include all costs, attorney's fees and other expenses paid or incurred by or imposed upon Seller in connection with the defense of any such claim. With respect to claims against Seller by Buyer's employees, Buyer agrees to expressly waive its immunity, if any, as a complying employer under the workers' compensation law, as immunity may effect this indemnification obligation. This waiver applies to Section 25, Article II of the Ohio Constitution and Ohio Revised Code Section 4123.74. Any indemnification of Seller or any limitation of Seller's liability which is made or granted under this Agreement shall to the same extent apply to any of Seller's affiliated companies including any officers, directors, or agents thereof.

**9. Insurance.** Buyer agrees that at all times while located on Seller's property, Buyer will maintain insurance in minimum amounts as follows: (1) Commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence, covering bodily injury and harm to property; and (2) Comprehensive business automobile insurance covering all owned, hired, and non-owned vehicles with a minimum combined single limit for bodily injury and property damage liability of \$1,000,000 per accident or occurrence. Seller must be listed as an additional insured on any such insurance, and said insurance will be primary and Seller's insurance will be non-contributory. Buyer, for itself and its insurer, waives all rights of subrogation against Seller.

**10. Governing Law.** The parties agree that the validity, interpretation and performance of any agreement arising out of this transaction shall be governed by the laws of the State of Ohio without regard to conflicts of interest laws. Buyer and Seller hereby submit to the exclusive jurisdiction for the resolution of any disputes hereunder, to the Tuscarawas County, Ohio Court of Common Pleas or, if permitted, the Federal District Court for the Northern District of Ohio. This shall be the sole and exclusive jurisdiction and venue for the purpose of adjudication of any rights and liabilities hereunder.

**11. Default.** In the case of default or breach by Buyer in the performance of any or all of the provisions of this Agreement, Seller shall have all remedies afforded by the Uniform Commercial Code as enacted in Ohio, these Terms or any other applicable law. Buyer shall, in addition, be liable for Seller's expenses incurred in exercising any remedies available to it, including reasonable attorney's fees and legal expenses. No default or breach of Seller shall occur unless Buyer has given 30 days advanced written notice of any default or breach of this Agreement to Seller and Seller fails to cure such breach or default within said 30 day period.

**12. Non-delivery.** Records kept as part of Seller's normal business practice regarding the quantity of Goods shipped to Buyer are presumed by the parties to be the factual

accounting of the quantity of Goods delivered to Buyer unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received. In addition to Buyer's remedies in Paragraph 5, any liability of Seller for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth on the first page, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in this Agreement adjusted pro rata.

**13. Quality.** The Seller's Goods are offered on the basis that the Buyer has taken all reasonable measures to confirm the Goods' suitability for the Buyer's own particular, applications and production methods. Buyer acknowledges the Goods will have some variation in the quality and characteristics. Goods purchased on the basis of weight are subject to customary quantity variations recognized by practice in the industry.

**14. Confidentiality.** Buyer and Seller and their respective affiliates shall keep confidential any price quotations, except those readily obtainable from public information, required by a regulatory commission, or otherwise required by law to be disclosed. This disclosing Party shall advise the other Party of the requested disclosure prior to such disclosure.

**15. Force Majeure.** Except for the obligation to pay money, neither Buyer nor Seller shall be in breach of this Agreement to the extent that any delay or default in performance is due to causes beyond the reasonable control of the delayed or defaulting Party. A Party affected by force majeure shall advise the other promptly of any force majeure conditions, describing the force majeure conditions, its effect on deliveries and expected duration.

**16. Trade Compliance.** Goods that are the subject of this document and related technology may be subject to export and re-export restrictions under U.S. and other countries' export control regulations, which may require U.S. or other government approval for any export, re-export or retransfer ("Export Control Regulations"). Buyer warrants that it will adhere to and comply with all applicable Export Control Regulations and will not, directly or indirectly through a third party, ship to any country or foreign person or entity in violation of Export Control Laws. Buyer will not request of Seller information or documentation where the purpose of such request is to support, give effect to, or comply with a boycott of any country in contravention of the laws or policies of the United States. Buyer will, in all cases, comply with the U.S. Foreign Corrupt Practices Act. Buyer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any item, or (ii) export, re-export, distribute or supply any item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations.

**17. Miscellaneous.** This Agreement is the sole and exclusive statement of the parties' understanding and agreement with respect to the transactions contemplated, notwithstanding any other terms that might be contained in any purchase order or other agreement received from Buyer or submitted to Seller. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used herein. This Agreement can only be modified or changed in writing and signed by authorized representatives of both parties, and shall be binding on the parties' heirs, successors and assigns. No waiver shall be deemed to occur as a result of the failure to enforce any term or condition of this Agreement. If any clause or portion hereof shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining clauses and portions thereof shall remain in full force and effect. The term Agreement used throughout refers to any quote and the sales invoice issued by Seller to Buyer, and these Terms, which together constitute the Agreement of the Parties. The term "Seller" used throughout shall refer to Kimble Company. The term "Buyer" used throughout shall refer to the party purchasing Goods from Seller in the transaction at issue.