

**George Koch Sons, LLC (“Buyer”)**  
**Additional Terms and Conditions to Purchase Order**  
**Revision 4.0**

**SHIPPING AND BILLING INSTRUCTIONS**

1. **ACKNOWLEDGEMENTS:** Seller agrees to acknowledge the order immediately in writing if Seller is unable to comply with any of the purchase order requirements (including but not limited to price and delivery). If no written acknowledgement is received within fourteen (14) days from date of the order, acknowledgement shall be presumed.
2. **PACKING:** All materials shall be suitably packed, tagged with our mark numbers as shown on face of the order, marked and shipped in accordance with the requirements of common carriers in a manner to secure lowest transportation cost, and no additional charge shall be made to the Buyer therefore unless otherwise stated herein.
3. **MARKING:**
  - A. Unless otherwise specified herein, Seller shall properly mark each package with Buyer's purchase order number, and each package of a multiple package shipment shall be consecutively numbered. Purchase order numbers, package numbers and mark numbers shall be shown on packing slips, bills-of-lading and invoices.
  - B. One packing slip must accompany each shipment.
  - C. No charge shall be made by Seller for drayage or storage, unless otherwise stated herein.
4. **SHIPPING:**
  - A. Seller agrees to describe material on bill-of-lading or other shipping receipt and to route shipment in accordance with instructions issued by Buyer.
  - B. Original bill-of-lading, or other shipping receipt, for each shipment shall be promptly forwarded by Seller.
5. **INVOICES:**
  - A. Seller agrees to render in DUPLICATE, on day of shipment, a separate invoice for each order, stating best cash discount.
  - B. Non-discount invoices will be payable net 45 days.
  - C. Billing prices are not to exceed those shown on the order, except by mutual written agreement prior to shipment.

**ADDITIONAL TERMS AND CONDITIONS**

1. **Vendors outside the US:** Any foreign vendor that does work in the US shall separate out on their invoices the amount of work actually performed in the US versus outside the US. In addition, George Koch Sons LLC shall require a W-8 form from all foreign entities that do subcontract work for George Koch Sons LLC.
2. **CONTRACT:** The contract resulting from the acceptance of this order by the seller listed on the order (“Seller”) is to be construed according to the laws and/or statutes of the State of Indiana. This contract is non-assignable by Seller except by the express written consent of the Buyer. The contract formed by the purchase order and these additional terms and conditions is sometimes collectively referred to herein as “this contract,” “the contract” or “the order” or “this order.” Any additional supplemental or different terms or conditions proposed by the Seller are objected to and shall not be binding on the Buyer unless specifically accepted in writing and signed off on by the Seller’s authorized representative.
3. **DELIVERY SCHEDULE:** Time of delivery is of the essence of the order. Delivery shall not be deemed to be complete until materials have been actually received and accepted by Buyer, notwithstanding any agreement to pay freight, express, or other transportation charges. Deliveries are to be made both in quantities and at times specified in schedules furnished by Buyer. Buyer will have no liability for payment for material or items delivered to Buyer which are in excess of quantities specified in the delivery schedules. Buyer may from time to time change delivery schedules or direct temporary suspension of scheduled shipments. Promptness of deliveries of material as specified herein is of the essence of this order.
4. **WARRANTY:** Seller expressly warrants that all the material and work covered by this order will conform to the specifications, drawings, samples or other description furnished or specified by Buyer, and will be merchantable, or good material and workmanship and free from defect. Seller expressly warrants that all the material and work covered by this order, which is the product of Seller or is in accordance with Seller's specifications, will be fit and sufficient for the purposes intended. Further, the Seller expressly warrants that the material and work covered by this order will carry a minimum two year warranty, or longer as offered by Seller, from date the material is put into service.
5. **INDEMNITY BY THE SELLER:** It is specifically understood and agreed that the Seller shall indemnify the Buyer and hold the Buyer harmless from any and all claims, demands, and suits (including attorney fees and experts fees) relating to personal injury, property damage, or economic injury arising from alleged defective design, material, workmanship or late deliveries of the materials sold under this order, including but not limited to the Buyer’s reasonable attorney and expert fees incurred in defense against such claims, demands and suits.
6. **CANCELLATION:** Buyer reserves the right to cancel all or any part of the order.
7. **INSPECTION:** All material shall be received subject to Buyer's inspection and rejection. Defective material, or material not in accordance with Buyer's specifications will be held for Seller's instruction and at Seller's risk and, if Seller so directs, will be returned at Seller's expense. Payment for material on this order prior to inspection shall not constitute an acceptance thereof, nor will acceptance remove Seller's responsibility for latent defects.

The Seller agrees to make allowance for the Buyer to perform any necessary verification upon the supplier’s premises as accompanied and organized by the Seller. Seller further agrees to allow the Buyer’s customer (end user) to accompany the Buyer on any such verification visits.

8. **CHANGE IN SPECIFICATIONS:** Buyer reserves the right, at any time, to make changes in drawings and specifications as to any material and/or work covered by this order. Any differences in price or time for performance resulting from such changes shall be equitably adjusted and the contract and/or schedule shall be modified in writing accordingly.
9. **MATERIALS FURNISHED BY BUYER:** Any material furnished by Buyer, on other than a charge basis in connection with this order, shall be deemed as held by Seller upon consignment. All such materials not used in the manufacture of the products covered by the order shall, as directed, be returned to Buyer at Buyers' expense, and, if not accounted for or so returned, shall be paid for by Seller. All such materials, including, but not limited to, tools, dies, gauges, jigs, fixtures, etc., owned by Buyer, shall be fully covered by Seller with fire and extended coverage insurance.
10. **REMEDIES:** The remedies set forth in this contract are cumulative. It is agreed the Buyer’s remedies at law are inadequate, and that Buyer will be entitled to

equitable relief and the Buyer is also entitled to any and all additional remedies provided by law or equity for breach of this contract, without the necessity of posting of a bond. The Buyer's waiver of a breach of any provisions of this contract shall neither constitute a waiver of any other breach nor a waiver of such provision of the purchase order.

11. **PATENTS:** Seller agrees to defend, protect and save harmless Buyer, its successors, assigns, customers and users of its products, against all claims, demands and suits at law or in equity, and from all damages, costs and expenses for actual or alleged infringement of any United States or foreign patent or trademark or copyright by reason of the use or sale of the materials relating to the order, including but not limited to the Buyer's reasonable attorney and expert fees incurred in defense against such claims, demands and suits.
12. **TECHNICAL INFORMATION DISCLOSED TO BUYER:** Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the materials or services covered by this order.
13. **INSURANCE:** If this order covers the performance of labor for Buyer, Seller agrees to indemnify and protect Buyer against all liabilities, claims or demands for injuries or damage to any person or property growing out of the performance of this contract by Seller, its servants, employees, agents or representatives. Seller further agrees to furnish upon Buyer's request insurance carrier's Certificate showing that Seller has adequate compensation, public liability, property damage, and automotive insurance coverage and designating the Buyer as an additional named insured under each of these coverages. Said Certificate must set forth the amount of coverage, number of policy and date of expiration. If Seller is self-insurer, the Certificate of the appropriate state agency of the state in which said labor is to be performed must be furnished by such state agency directly to Buyer. The purchase of such insurance coverage or the furnishing of the aforesaid Certificate shall not be in satisfaction of Seller's liability hereunder or in any way modify Seller's indemnification of Buyer. Said indemnification shall be applicable even if allegations of negligence against the Buyer are made by any third party.
14. **GOVERNMENT REGULATIONS:** In the performance of work under this order, Seller agrees to comply with all applicable Federal, State and local laws, rules, regulations or Ordinances, upon which agreement Buyer specifically relies.
15. **NO ORAL AGREEMENTS:** No employee or agent of the Buyer has the authority to modify the terms and conditions of this purchase order by oral agreement. No modification of such terms and conditions shall be binding on the Buyer unless made in writing and signed by the Buyer's authorized representative.
16. **PROPRIETARY RIGHTS:** Seller agrees that Buyer's products, designs, processes, and operations are proprietary data and shall not be utilized for purposes other than those required by this purchase order without written permission of Buyer.
17. **SEVERABILITY:** If any provisions of this purchase order shall be prohibited by or invalid under applicable law, such prohibition or invalidity shall not invalidate or render ineffective the remaining provision, and such provision shall be enforced to the fullest extent permissible.
18. **ALTERNATIVE DISPUTE RESOLUTION.** Any and all disputes, complaints, controversies, claims and grievances arising under, out of, in connection with, or in any manner relating to the Agreement shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and any judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding said Rules, any arbitration hearing to take place hereunder shall be conducted in Evansville, Indiana before one (1) arbitrator who shall be an attorney residing in the State of Indiana, and having substantial experience in commercial law issues. In the event of any arbitration between the parties hereto involving this Agreement or the respective rights of the parties hereunder, the party who does not prevail in such arbitration shall pay to the prevailing party reasonable attorneys' fees, experts' fees, costs and expenses of such arbitration incurred by the prevailing party. As used herein the term 'prevailing party' shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement, or judgment.
19. **ACCEPTANCE:** The delivery of the articles, good or materials set out on the face of this document shall constitute acceptance by Seller of the terms and conditions set out herein. Alternatively, by signing below, Seller accepts the Terms & Conditions set out herein and Seller agrees that all purchase Orders shall be governed by these Terms and Conditions and that these Terms and Conditions need not accompany every future Purchase Order.
20. **INTERPRETATION:** The order of precedence for any internal inconsistency, conflict or ambiguity within these terms and conditions and the order or any of the documents shall be: (1) the order, (2) these additional terms and conditions, and (3) any other documents or specifications by the Seller and Buyer. This Agreement shall inure to the benefit of, and shall be binding upon, the respective legal representatives, successors, and assigns of each of the parties. In the event that ambiguity exists or is deemed to exist in any provisions of this Agreement, said ambiguity is not to be construed by reference to any doctrine calling for such ambiguity to be construed against the drafter of this Agreement. **THIS PROVISION, AND EACH AND EVERY OTHER PROVISION OF THIS AGREEMENT MAY NOT UNDER ANY CIRCUMSTANCES BE MODIFIED, CHANGED, AMENDED OR PROVISIONS HEREUNDER WAIVED VERBALLY, BUT MAY ONLY BE MODIFIED, CHANGED, AMENDED OR WAIVED BY AN AGREEMENT IN WRITING EXECUTED BY ALL PARTIES HERETO.**