



## GENERAL TERMS AND CONDITIONS OF PURCHASING

### KELVION INC. PHE DIVISION

#### 1. **APPLICABILITY**

- a) These terms and conditions of purchase (these "**Terms**") are the only terms which govern the purchase of the goods ("**Goods**") and services ("**Services**") by Kelvion Inc. PHE Division ("**Buyer**") from the seller named on the reverse side of these Terms ("**Seller**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- b) The purchase order printed on the reverse side of these Terms (the "**Purchase Order**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller's general terms and conditions of sale regardless whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance to the terms of this Agreement. Fulfillment of this Purchase Order constitutes acceptance of these Terms.

#### 2. **DELIVERY OF GOODS**

- a) Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. If the Purchase Order cannot be filled according to our specifications, price, delivery instructions, terms and conditions, Seller must advise Buyer in writing immediately.
- b) Seller shall deliver all Goods to the address specified in the Purchase Order (the "**Delivery Point**") during Buyer's normal business hours or as otherwise instructed by Buyer. Seller shall pack all goods for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition.
- c) Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's risk of loss and expense.
- d) Seller acknowledges that time is of the essence with respect to Seller's obligations hereunder and the timely delivery of the Goods, including all performance dates, timetables, project milestones and other requirements in this Agreement.



### 3. QUANTITY

If Seller delivers less or more than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

### 4. SHIPPING TERMS

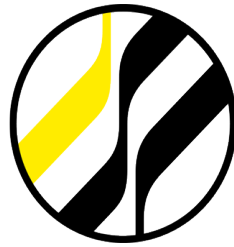
Delivery shall be made DAP (place of destination). The seller bears the risk and expense of transporting the goods to the place of destination. Unless different terms are approved and agreed upon by the buyer. With regards to the passing of title and risk of loss, the provisions contained in **Section 5** below, will prevail. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence, packaging any other documents pertaining to the Purchase Order. If the order is not shipped by Seller, the name of the shipper must appear on Seller's invoice.

### 5. TITLE AND RISK OF LOSS

Title & Risk of loss (other than Transportation damage) on all items shipped by Seller to Buyer, notwithstanding any agreement to pay freight, express, or other transportation charges, shall not pass to Buyer until goods have been actually received, inspected, and accepted by Buyer. Risk of loss due to Transportation is governed by Incoterm 2010.

### 6. INSPECTION AND REJECTION OF NONCONFORMING GOODS

Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to **Section 17**. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.



## 7. PRICE

The price of the Goods is the price stated in the Purchase Order (the "**Price**"). If no price is included in the Purchase Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Purchase Order. Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. Seller confirms that the Prices charged for the items covered by the Purchase Order are the lowest prices charged by Seller to other buyers who are in competition with the Buyer for goods of like grade or quality, and upon conditions similar to those specified in the Purchase Order and that prices comply with the applicable government regulations in effect at time of quotations, sale or delivery. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

## 8. PAYMENT TERMS

Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with these Terms. Buyer shall pay all properly invoiced amounts due to Seller within forty five (45) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than ten (10) days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this **Section 8**. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute.

## 9. CHANGE ORDERS

Buyer may at any time, by written instructions and/or drawings change specifications , quantities , delivery schedules, methods of shipment or packaging and place of inspection and/or point of delivery of any item to be furnished (each a "**Change Order**"). Seller shall within seven (7) days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and



conditions of this Agreement. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller's compensation or the performance deadlines under this Agreement. No change shall be effective unless authorized in writing by Buyer. If any changes result in delay or an increase or decrease in expense to Seller, Seller shall notify Buyer immediately in writing and negotiate an equitable adjustment, provided, however, that Seller shall in all events proceed diligently to supply the items or perform the work or service contracted for under the Purchase Order as so changed. No claim by Seller for such equitable adjustment shall be valid unless notice of the Sellers alleged entitlement is submitted to Buyer in writing within thirty (30) days from the date of such notice of change being submitted by the Buyer. The notice of alleged entitlement will include an estimate of charges and or savings and/or effect on delivery times resulting from such changes.

## 10. WARRANTIES

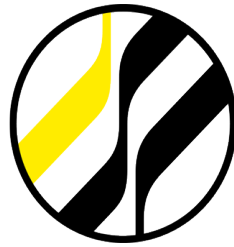
- a) Seller warrants to Buyer that for a period of twelve (12) months from the Delivery Date, all Goods will:
- i. be free from any defects in workmanship, material and design;
  - ii. conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer/set forth in the Purchase Order;
  - iii. be fit for their intended purpose and operate as intended;
  - iv. be merchantable;
  - v. be free and clear of all liens, security interests or other encumbrances; and
  - vi. not infringe or misappropriate any third party's patent or other intellectual property rights.

These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer; and

- b) The warranties set forth in this **Section 10** are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods or Services with the foregoing warranties. If Buyer gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, within seven (7) days (or any other reasonable time agreed between the Buyer and the Seller) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer.

## 11. GENERAL INDEMNIFICATION

Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent company, its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders and employees (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency,



action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the Goods purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's prior written consent.

## 12. INTELLECTUAL PROPERTY INDEMNIFICATION

Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

In the event use of said equipment or items or any part thereof is enjoined, Buyer at its election may require Seller at Seller's expense to either:

- i. procure within 30 days for Buyer the right to continue using said items or equipment or part, or;
- ii. modify same so it becomes non-infringing, or;
- iii. replace it with non-infringing equipment or part, or;
- iv. remove the item or equipment and refund that portion of the purchase price paid therefore by Buyer for the item or equipment less 10% thereof each 12 months following the date of its acceptance.

The foregoing is in addition to any other written warranty, obligation or liability for patent infringement that may rise pursuant to the provision of the Uniform Commercial Code of Pennsylvania.

## 13. INSURANCE

During the term of this Agreement and for a period of six (6) months thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to.

- i. Workers' Compensation
- ii. Employers' Liability
- iii. Comprehensive General Liability (including blanket contractual liability):

Bodily injury	\$1,000,000 each person
	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Property Damage	\$ 500,000 each occurrence
Broad Form Property/Damage Personal Injury	\$ 500,000 each person
- iv. Comprehensive Automobile Liability:



Bodily Injury	\$1,000,000 each person \$1,000,000 each occurrence
Property Damage	\$ 500,000 each occurrence

Seller will furnish a certificate of insurance reflecting such coverage to Buyer upon request.

#### 14. TAXES AND OTHER EXACTIONS

Seller agrees to assume exclusive liability under all laws that impose taxes or other exactions on the manufacture or sale of the items to be furnished pursuant to the Purchase Order, contract, or otherwise hereunder, or any component part thereof, or on any process of labor involved therein, or on any services to be rendered by Seller, and to pay any and all such taxes except those Buyer specifically agrees or is by law required to pay. Any taxes to be paid by Buyer shall be separately stated on the invoice. Prices shall not include any taxes for which Seller can obtain, or Buyer can furnish exemption.

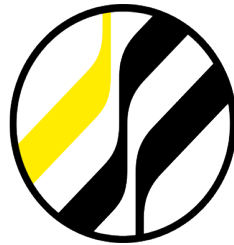
#### 15. ANTITRUST AND COMPLIANCE WITH LAW

Seller shall comply with all applicable laws, regulations and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Seller shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Seller. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

Seller acknowledges the Buyers commitment to comply with the all laws and regulations relating to compliance. Buyer relies on the performance, customer orientation and quality of its products and services, not on illegal or unethical practices, to succeed. Buyer does not, therefore, engage in or tolerate corruption or other illegal practices. It expects all its officers, employees and business partners (e.g. agents, consultants, suppliers) to refrain from any form of corruption in any country, and will take appropriate action against those violating this obligation. Seller expressly covenants that the items and goods sold pursuant to the Purchase Order, contract, or otherwise hereunder are sold in full compliance with all laws and regulations and in particular to the Federal Trade Commission Act and the Clayton Act, as amended, and all other federal antitrust statutes.

#### 16. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Seller covenants that the items or goods or services purchased by Buyer are sold or furnished in full compliance with the Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders issued pursuant thereto and all other federal and state occupational safety and health statutes, the provisions of which are substantially the same as those found in the Occupational



Safety and Health Act of 1970 or administered by any state pursuant to that Act. All sales of hazardous materials as defined in Title 29 or the Code of Federal Regulations, Chapter VIII, Parts 1501 - 1503, shall be accompanied by a completed U. S. Department of Labor Material Safety Data Sheet, Form OHF A-20, by the Seller for each product sold to Buyer.

## **17. TERMINATION**

In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Agreement upon written notice to Seller. If Buyer terminates the Agreement for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted and Services accepted by Buyer prior to the termination.

## **18. WAIVER**

The remedies reserved to Buyer herein, except where expressly stated to be exclusive, shall be cumulative and in addition to any other or further remedies provided by law. No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## **19. CONFIDENTIAL INFORMATION.**

All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section.





## 20. **FORCE MAJEURE.**

Neither party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions and Strike action by Seller's Employees are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Agreement. If a Force Majeure Event prevents Seller from carrying out its obligations under this Agreement for a continuous period of more than five (5) business days, Buyer may terminate this Agreement immediately by giving written notice to Seller.

## 21. **ASSIGNMENT**

Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer's assets.

## 22. **RELATIONSHIP OF THE PARTIES**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

## 23. **NO THIRD-PARTY BENEFICIARIES**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

## 24. **GOVERNING LAW**

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws the Uniform Commercial Code and the laws of the Commonwealth of





Pennsylvania without giving effect to any choice or conflict of law provision or rule or any other jurisdiction that would cause the application of the laws of any jurisdiction other than those of the State of Commonwealth of Pennsylvania. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Commonwealth of Pennsylvania.

## 25. NOTICES

All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). A copy of all notices will also be send by electronic mail. Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

## 26. SEVERABILITY

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

## 27. SURVIVAL

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidential Information, Governing Law and Survival.

## 28. AMENDMENT AND MODIFICATION

These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.