

TERMS AND CONDITIONS OF PURCHASE

1. General

These terms and conditions of purchase (hereinafter “**Terms and Conditions**”) shall apply to all products (hereinafter “**Products**”) purchased by System Solutions of Kentucky, LLC, a Kentucky limited liability company, or any of its affiliates (hereinafter “**Buyer**”) from its suppliers (hereinafter “**Supplier**”), and Supplier shall be deemed to accept these Terms and Conditions by supplying any Products, unless specifically agreed otherwise in writing between Supplier and Buyer. These Terms and Conditions override any additional or deviating terms and conditions included in any order confirmation of Supplier or otherwise referred to by Supplier or Buyer, unless specifically agreed otherwise in writing.

2. Inspections and Quality Control

Unless otherwise agreed, the dies, jigs, drawings, patterns, molds, blueprints, templates, gages, equipment and like tools and instruments (hereinafter “**SSK Tools**”) furnished or paid by Buyer and used for the manufacturing of the Products shall be in Buyer’s ownership. Supplier shall never use SSK Tools for any supplies to third parties. SSK Tools shall be under Supplier’s control and any damage or loss incurred to SSK Tools shall be duly compensated to Buyer by Supplier. Supplier shall insure Buyer’s interest in SSK Tools against all risks of theft, loss or damage. Upon termination of the supply relationship, Supplier shall return SSK Tools without delay to Buyer at Supplier’s cost.

3. Forecasting, Volumes and Change Orders

3.1 For planning purposes only, Buyer may forward regular non-binding forecasts of requirements to Supplier. No compensation whatsoever shall be payable to Supplier in the event the quantities actually purchased deviate from any estimated quantities.

3.2 In the event Buyer desires to modify the specifications of any Products under an order, Buyer shall notify Supplier of such requested changes. In the event such changes will result in an increase in the time for performance or cost of the Products, Supplier must notify Buyer in writing of such increase within ten (10) days of Buyer’s request for the change. The parties will negotiate in good faith to resolve any issues related to the changes requested by Buyer.

4. Special Tooling

Unless otherwise agreed, the dies, jigs, drawings, patterns, molds, blueprints, templates, gages, equipment and like tools and instruments (hereinafter “**SSK Tools**”) furnished or paid by Buyer and used for the manufacturing of the Products shall be in Buyer’s ownership. Supplier shall never use SSK Tools for any supplies to third parties. SSK Tools shall be under Supplier’s control and any damage or loss incurred to SSK Tools shall be duly compensated to Buyer by Supplier. Supplier shall insure Buyer’s interest in SSK Tools against all risks of theft, loss or damage. Upon termination of the supply relationship, Supplier shall return SSK Tools without delay to Buyer at Supplier’s cost.

5. Title, Delivery and Risk of Loss

5.1 Supplier shall transfer the Products with good title, free from any liens or encumbrances.

5.2 Title to the Products shall pass to Buyer upon delivery of the Products at Buyer’s disposal at the agreed location.

5.3 The Products shall be shipped F.O.B. destination at the location specified by Buyer in an order, and Supplier shall bear all risks of loss of or damage to the Products until the Products have been placed at Buyer’s disposal at the agreed location. Buyer shall bear all costs of delivering the Products, including shipping and insurance charges, duties, taxes and other charges.

5.4 Delivery of the Products shall take place in clean, hygienic and physically sound conditions according to the terms and conditions agreed between Supplier and Buyer, in such quantities and at such times as Buyer shall have designated in any order or other communication to Supplier. The Products shall be packed and marked in accordance with Buyer’s instructions and always be packed as to have the necessary protection to prevent damage to the Products during the transportation. Supplier will pack and ship Products in compliance with any applicable hazardous materials laws, regulations, ordinances and orders.

5.5 Timely delivery of the Products shall be of the essence of the supply relationship. All orders shall be shipped complete by the date requested. Supplier shall notify Buyer in writing immediately as it becomes aware that it will be unable to deliver the Products on the due date or within the agreed time. In order to swiftly notify Buyer of any delays in the delivery of the Products Supplier shall actively follow-up the progress of production and the delivery with the used transportation method. The acceptance of late deliveries shall not constitute a waiver by Buyer of its right to cancel an order or to refuse to accept further deliveries. Goods shipped in advance by Supplier may be returned to Supplier, at Supplier’s expense, or may be held by Buyer with payment therefore deferred until after the scheduled date of delivery.

6. Warranties

6.1 Supplier warrants that the Products delivered to Buyer hereunder shall at the time of delivery be in accordance with agreed specifications and fit for the purpose for which Products of that kind are commonly used. Supplier, furthermore, warrants that the Products shall be free and clear of any and all liens, restrictions and encumbrances, and comply with any applicable legal and regulatory requirements.

6.2 The Products shall be free from any defects in design, materials and workmanship. Supplier warrants that the Products shall not infringe or violate against any patent, design, trademark, trade name or any other intellectual property right of a third party.

6.3 Supplier shall ensure that the Products have not been exposed to any microbiological, foreign body or chemical hazards, and Supplier shall provide Buyer with all information of the characteristics of the Products on request. Documentation evidencing the compliance with all necessary information of quality, environmental, health and safety effects of the Products and the management systems of the said effects implemented by Supplier must be made available by Supplier on request.

6.4 These warranties shall be in addition to all other warranties, express, implied or statutory, and shall run to Buyer, its successors, assigns, customers and any users to the Products.

6.5 Supplier shall ensure it has complied with all quality standards and procedures furnished by Buyer or generally applicable in the industry and all applicable laws, regulations, standards, ordinances and orders in performing the order.

7. Performance Measuring, Remedies and Liability

7.1 At the time of shipment of the Products to Buyer, Supplier shall send to Buyer’s quality control department at Buyer’s receiving facility or such other location as Buyer may designate the certificate of analysis of each shipment of Products at a separate request of Buyer. Supplier shall retain a sample from each delivery of the Products for not less than two years. Furthermore production or batch records identifying lots of raw materials used in the manufacture of a batch of the Products shall be retained by Supplier for not less than two years.

7.2 Buyer shall notify Supplier without unnecessary delay, if Buyer determines that any Products do not meet their specification, or otherwise do not comply with the agreed Terms and Conditions. Such defective Products shall constitute a breach of these Terms and Conditions and shall upon request from Buyer be immediately (i) replaced by Supplier at Supplier’s cost and expense, or (ii) the order shall be cancelled, in which case Supplier will refund to Buyer all amounts paid for such Products, in each case without prejudice to any other remedy of Buyer under these Terms and Conditions or by law or in equity. All storage and other costs related to the defective Products shall be for the account of Supplier. Risk for the defective Products shall at all times remain with Supplier.

7.3 Supplier shall defend, indemnify and hold Buyer, its successors, assigns, customers, affiliates, employees, agents and users (collectively, the “**Indemnified Parties**”), harmless from and against all liability, loss, costs and expenses (including attorneys’ fees and legal expenses), including but not limited to any loss of profits, loss of business, depletion of goodwill (whether direct or indirect) and indirect, consequential, special, punitive and exemplary damages, that have been awarded against or incurred or paid by the Indemnified Parties as a result of or in connection with (i) a breach by Supplier of any of the warranties or other obligations set out in these Terms and Conditions or any other terms and conditions governing the supply relationship, (ii) a breach by Supplier of any obligation imposed by applicable law, (iii) any act or omission of Supplier or its subcontractors related to the order, (iv) product liability, (v) environmental liability, (vi) intellectual property infringement or (vii) the supply relationship.

7.4 IN NO EVENT WILL BUYER BE LIABLE TO SUPPLIER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES REGARDLESS OF THE LEGAL THEORY ON WHICH ANY LIABILITY CLAIM IS MADE. In no event will Buyer’s liability to Supplier exceed the amount due under the applicable order for the Products.

8. Insurance

Supplier shall obtain and keep commercial general liability insurance (including contractual liability and products liability) in effect during the supply relationship. Supplier shall obtain the insurance at its own expense from carriers acceptable to Buyer. If requested by Buyer, Supplier shall name Buyer, including its affiliates and their respective officers, directors, employees, and agents as additional insured under its general liability insurance. Compliance with this insurance requirement shall in no way limit Supplier’s obligations or liabilities under these Terms and Conditions. Supplier shall provide Buyer with certificates of insurance evidencing the above-required coverage at Buyer’s request.

9. Price, Price Adjustment and Payment

9.1 The price for the Products to be paid by Buyer shall be inclusive of any value added tax (which shall be separately specified to Buyer) and other similar taxes, duties or imposts levied by any governmental agency (including, but not limited to, those at state or municipal levels) with respect to the Products supplied hereunder. The price for the Products shall include all transportation costs, unless otherwise specifically agreed in writing. For the duration of the supply relationship, no increase in the price may be made (whether on account of currency regulations, changes in duties or taxes, increase in the cost of raw materials, labor, energy, transport or otherwise), without the prior consent of Buyer in writing. Time for payment shall not be of the essence.

9.2 If, during the supply relationship, Supplier’s net prices to buyers situated similarly to Buyer for materials similar to those furnished to Buyer are reduced below those agreed by Supplier and Buyer, Supplier agrees to give Buyer the benefit of such reduction.

9.3 Buyer may withhold or set off from any payment any amount as to which a dispute exists under any order or against any amount due Buyer under any other transaction with Supplier. Payment shall never imply a waiver by Buyer of any right it may have under these Terms and Conditions or by law or in equity.

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10. Force Majeure

Neither party shall be liable for non-performance of its obligations if such non-performance is caused by fire, natural disasters, flood, riot, revolt, war, acts of governmental authority or contingencies beyond the reasonable control of the party affected but excluding strikes or industrial action. A party cannot rely on force majeure for its non-performance when the negative effects of an event affecting the performance of the party can reasonably be resolved through the activation of contingency plans. The party affected by any such events shall immediately notify the other party and indicate the expected duration of such interruption. The parties will use their respective best endeavors to mitigate the effect thereof in the best possible way. In the event the force majeure continues beyond a period of fourteen (14) days, the other party has the right to terminate the supplies concerned by written notice, without having to pay any form of compensation.

11. Confidentiality

11.1 The parties hereto undertake towards each other during the term of the supply relationship and three (3) years thereafter to keep in the strictest confidence all confidential information and trade secrets received from the other party in connection with the supply relationship, and to use the said information for the purposes of the supply relationship only. However, the obligation above shall not apply to confidential information:

- (i) which the receiving party may prove having been in the possession prior to the first receipt from the other party;
- (ii) which at the date hereof or thereafter becomes a matter of public knowledge without a breach of this confidentiality obligation; or
- (iii) which the receiving party may prove having been obtained from a third party under circumstances permitting its disclosure to others.

11.2 The parties shall not, without prior written consent of the other party, disclose to any third parties that there exists any cooperation between the parties.

11.3 Notwithstanding Article 11.1 above, the obligation of nondisclosure and nonuse of Buyer's trade secrets and manufacturing know-how shall not expire.

12. Non-performance

If Supplier fails to perform any of its obligations when due, Buyer may, at its option and in addition to any other remedies available to it and without any compensation to Supplier, decline to make further payments, cancel any orders and/or cancel the supply relationship. The foregoing rights shall be cumulative, alternative and in addition to any right or remedy Buyer may have under these Terms and Conditions or by law or in equity.

13. Performance by Affiliates

At Buyer's option, any obligation of Buyer may be performed by any of its affiliates.

14. Assignments and Third Party Rights

14.1 Supplier shall not transfer nor assign its obligations to any third party (excluding the Supplier's affiliates) without Buyer's prior written consent.

14.2 A person who is not a party to a contract incorporating these Terms and Conditions shall not have any right (whether under any statute or otherwise) to enforce any provision of that contract.

15. Non-waiver

Failure to exercise any rights shall not constitute a waiver thereof.

16. Severability of Provisions

If any provision of these Terms and Conditions should be held invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected.

17. Applicable Law and Dispute Resolution

17.1 Unless specifically agreed otherwise in writing, these Terms and Conditions and the supply relationship shall be governed by and construed in accordance with laws of the State of Kentucky.

17.2 Unless specifically agreed otherwise in writing, any dispute, controversy or claim arising out of or relating to these Terms and Conditions, the supply relationship or the breach, termination or validity thereof (whether contractual or non-contractual in nature) shall be finally settled by arbitration in accordance with the CPR Institute Rules for Non-Administered Arbitration of Business Disputes (the "Rules") by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall take place in Jefferson County, Kentucky. Regardless of the aforesaid, Buyer shall alternatively be entitled to assert its own claims against Supplier at the courts located in Jefferson County, Kentucky. In no event will the provisions of the U.N. Convention on the International Sale of Goods apply to an order unless Buyer in its sole discretion, bring a claim against Supplier in another court of competent jurisdiction.

18. Termination.

Buyer may terminate any order in whole or in part, at any time for its convenience, by notice to Supplier in writing. On receipt by Supplier of such notice, Supplier shall stop work and the placement of subcontracts and terminate work under outstanding subcontracts. In such event, Buyer shall pay to Supplier, without duplication the (1) amounts due for Products delivered and accepted or services completed in accordance herewith prior to the effective date of termination; plus (2) actual costs incurred by Supplier to the terminated portion of the order excluding any charges for material or parts which may be delivered to other orders. Such termination claim shall be submitted to Buyer within thirty (30) days after the effective date of the termination.

19. Nonsolicitation.

Supplier agrees that during Supplier's engagement with Buyer and for the one (1) year period thereafter, Supplier will not, directly or indirectly, solicit, attempt to obtain business from, accept business from, service, communicate with or contact any of Buyer's Clients, except through Buyer, regarding the purchase, lease or license of parts, equipment, other products or services that are the same as, similar to, or in competition with any parts, equipment, other products and/or services offered, sold, rendered or under development by Buyer. "Client," as used herein, shall mean any person or entity that procured any parts, equipment, products or services from Buyer during Supplier's engagement with Buyer.

20. Trade Marks and Trade Names

If the Products are particular to Buyer's design or if the Products bear Buyer's trademark or other identifying mark, they shall not bear any trademark or other designation of Supplier and Products bearing Buyer's trademarks or identifying marks shall not be sold or otherwise disposed of to any party other than Buyer, without the written consent of Buyer. Unless authorized by Buyer in writing, the names (trade or otherwise) of Buyer shall not be used in Supplier's advertising.

21. Amendments

These Terms and Conditions shall be subject to further amendments or rescission made by Buyer without notice to Supplier and a valid version is always available upon request.