

## **Kulicke & Soffa Netherlands B.V. - General Conditions of Purchase**

### **1. Definitions**

In this document: (a) "Agreement" shall mean the binding contract formed as described in Section 2.1 herein; (b) "Goods" shall mean both tangible and intangible goods, including software and related documentation. References to Goods shall, where appropriate, be deemed to include Services; (c) "K&S" shall mean the relevant Kulicke & Soffa purchasing legal entity that issues the Purchase Order; (d) "Services" shall mean the services to be performed by Supplier for K&S under this Agreement; (e) "Supplier" shall mean each person or entity (including, where relevant, its affiliates) that enters into an Agreement.

### **2. Acceptance**

2.1. These General Conditions of Purchase, together with the relevant Purchase Order issued by K&S, set forth the terms of K&S's offer to Supplier. When Supplier accepts K&S's offer, either by acknowledgement, delivery of any Goods and/or commencement of performance of any Services, a binding contract shall be formed ("this Agreement"). Such Agreement is limited to these General Conditions of Purchase as specified on the face and reverse of this document, the relevant Purchase Order and any attachments. K&S does not agree to any proposed addition, alteration, or addition by Supplier. This Agreement can be varied only in writing signed by K&S. Any other statement or writing of Supplier shall not alter, add to, or otherwise affect this Agreement.

2.2. K&S is not bound by and hereby expressly rejects Supplier's general conditions of sale and any additional or different terms or provisions that may appear on any proposal, quotation, price list, acknowledgment, invoice, packing slip or the like used by Supplier. Course of performance, course of dealing, and usage of trade shall not be applied to modify these General Conditions of Purchase.

2.3. All costs incurred by Supplier in preparing and submitting any acceptance of K&S's offer shall be for the account of Supplier.

### **3. Time of the Essence**

Time is of the essence and all dates

referred to in this Agreement shall be firm. In the event that Supplier anticipates any difficulty in complying with any delivery date or any of its other obligations under this Agreement, Supplier shall promptly notify K&S in writing.

### **4. Delivery of Goods**

4.1. Unless expressly agreed otherwise in writing, all Goods shall be delivered FOB (as defined in the latest version of the Incoterms) final destination determined by K&S.

4.2. Delivery shall be deemed completed at the moment receipt has been acknowledged by K&S in writing but this shall not constitute acceptance of the Goods.

4.3. Supplier shall, concurrently with the delivery of the Goods, provide K&S with copies of all applicable licenses. Each delivery of Goods to K&S shall include a packing list which contains at least (i) the applicable order number, (ii) the K&S part number, (iii) the quantity shipped, and (iv) the date of shipment.

4.4. Supplier shall make no partial delivery or delivery before the agreed delivery date(s). K&S reserves the right to refuse delivery of Goods and return same at Supplier's risk and expense if Supplier defaults in the manner and time of delivery or in the rate of shipment. K&S shall not be liable for any costs incurred by Supplier related to production, installation, assembly or any other work related to the Goods, prior to delivery in accordance with this Agreement.

4.5. Any design, manufacturing, installation or other work to be performed by or on behalf of Supplier under this Agreement shall be executed with good workmanship and using proper materials.

4.6. Supplier shall pack, mark and ship the Goods in accordance with sound commercial practices and K&S's specifications in such manner as to prevent damage during transport and to facilitate efficient unloading, handling and storage, and all Goods shall be clearly marked as destined for K&S. Supplier shall be responsible for any loss or damage due to its failure to properly preserve, package, handle, or pack the Goods; K&S shall not be required to assert any claims for such loss or damage against the common carrier involved.

### **5. Changes to Goods**

Supplier shall not, without prior written consent of K&S, make any changes affecting Goods, including process or design changes, changes to manufacturing processes (including geographic location) changes affecting electrical performance, mechanical form or fit, function, environmental compatibility, chemical characteristics, life, reliability or quality of Goods or changes that could have significant impact upon Supplier's quality system.

## 6. Performance of Services

- 6.1. Supplier shall perform the Services with due skill and care, using the proper materials and employing sufficiently qualified staff.
- 6.2. Supplier shall be fully liable for any and all third parties with which it has contracted in connection with the Services.
- 6.3. Only written confirmation by K&S shall constitute acceptance of the Services performed.

## 7. Inspection, Rejection of Goods

- 7.1. Inspection of or payment for the Goods by K&S shall not constitute acceptance. Inspection or acceptance of or payment for the Goods by K&S shall not release Supplier from any of its obligations, representations or warranties under this Agreement.
- 7.2. K&S may, at any time, inspect the Goods or the manufacturing process for the Goods. If any inspection or test by K&S is made on the premises of Supplier, Supplier shall provide reasonable facilities and assistance for the safety and convenience of K&S's inspection personnel.
- 7.3. If K&S does not accept any of the Goods or Services, K&S shall promptly notify Supplier of such rejection, and Section 11 below shall apply. Within two (2) weeks from such notification, Supplier shall collect the Goods from K&S at its own expense or shall promptly perform the Services in accordance with K&S' instructions. If Supplier does not collect the Goods within said two (2) week period, K&S may have the Goods delivered to Supplier at Supplier's cost, or with the Supplier's prior consent destroy the Goods, without prejudice to any other right or remedy K&S may have under this Agreement or at law.
- 7.4. If, as a result of sampling inspection, any portion of a lot or shipment of like or similar items is found not to be in

conformity with this Agreement, K&S may reject and return the entire shipment or lot without further inspection or, at its option, complete inspection of all items in the shipment or lot, reject and return any or all nonconforming units (or accept them at a reduced price) and charge Supplier the cost of such inspection.

## 8. Prices; Payment

- 8.1. Title in the Goods shall pass to K&S on the earlier of (i) delivery of the Goods in accordance with clause 4 of these General Conditions of Purchase or (ii) payment.
- 8.2. All prices quoted in this Agreement shall be fixed prices. Supplier warrants that such prices are not in excess of the lowest prices charged by Supplier to other similarly situated customers for similar quantities of goods or services of like kind and quality.
- 8.3. (i) All prices are gross amounts but exclusive of any value added tax (VAT), sales tax, GST, consumption tax or any other similar tax only.  
(ii) If the transactions as described in this Agreement are subject to any applicable VAT, sales tax, GST, consumption tax or any other similar tax, Supplier shall be allowed to charge VAT, sales tax, GST, consumption tax or any other similar tax to K&S, which shall be paid by K&S on top of the prices quoted. Supplier is responsible for paying any applicable VAT, sales tax, GST, consumption tax or any other similar tax to the appropriate (tax) authorities. Supplier shall issue an invoice containing wording that shall allow K&S to take advantage of any applicable "input" tax deduction. In addition, Supplier shall inform K&S whether K&S is allowed to apply for an exemption if and to the extent allowed under applicable law in such specific situation.
- 8.4. Any license fees shall be included in the price.
- 8.5. Subject to the acceptance of the Goods and/or Services by K&S, payment shall be made:
  - (a) where K&S is incorporated in Asia, within ninety (90) days from the end of the month of the receipt of the correct invoice in the proper form; or
  - (b) where K&S is incorporated in another part of the world, within sixty (60) days from the end of the

- month of the receipt of the correct invoice in the proper form.
- 8.6. If Supplier fails to fulfill any of its obligations under this Agreement, K&S may suspend payment to Supplier.
- 8.7. K&S shall at all times have the right to set off and deduct from any amounts owing from K&S to Supplier or any of its affiliates any amount owing from Supplier or any of its affiliates to K&S, irrespective of the nature of any such claim.
- 8.8. Supplier acknowledges and agrees that any amount to be paid by K&S to Supplier may be paid on K&S's behalf by another legal entity belonging to the K&S Group of Companies and/or a third party designated by K&S. Supplier shall treat such payment as if it were made by K&S itself and K&S's obligation to pay to Supplier shall automatically be satisfied and discharged in the amount paid by such entity.

9. **Warranty**

- 9.1. Supplier represents and warrants to K&S that:
- (a) all Goods are suitable for the intended purpose and shall be new, merchantable, of good quality and free from all defects in design, materials, construction and workmanship;
  - (b) all Goods strictly comply with the specifications, approved samples and all other requirements under this Agreement;
  - (c) all Goods shall be free from any and all liens and encumbrances (including retention of title); (i) all Goods have been designed, manufactured and delivered, and all Services have been provided in compliance with all applicable laws (including labor laws), regulations, EC Directive 2001/95 on General Product Safety; (ii) Goods and Services are provided with and accompanied by all information and instructions necessary for proper and safe use;
  - (d) all required licenses in relation to the Goods are and shall remain valid and in place, that the scope of such licenses shall properly cover the intended use of the Goods and all such licenses shall include the right to transfer and the right to grant sublicenses;
  - (e) where the Goods or Services incorporate or contain chemicals or dangerous hazardous goods or

- substances, these shall be accompanied by written and detailed specifications of the composition and characteristics of such goods or substances and of all laws, regulations and other requirements relating to such goods or substances in order to enable K&S to transport, store, process, use and dispose of such Goods properly and in a safe manner; and
- (f) all Goods do not violate or infringe any third party domestic or foreign patent, copyright (including portrait rights and moral rights), trade secret, trademark or other intellectual property rights.

- 9.2. These warranties shall not be deemed to exclude Supplier's standard warranties or other rights or warranties which K&S may have or obtain, shall survive any delivery, inspection, acceptance, payment or resale of the Goods, and shall extend to K&S and its customers. Acceptance of, or payment for, all or any part of the Goods or Services furnished under this Agreement shall not be deemed to be a waiver of K&S's right to cancel or return or reject all or any part thereof because of failure to conform to order or by reason of defects, latent or patent, or other breach of warranties, or to make any claim for damages, including manufacturing costs and loss of profits or other special damages occasioned to K&S.

10. **Open Source Software Warranty**

- Unless the inclusion of same is specifically authorized in writing by duly authorized officers of K&S, Supplier represents and warrants that the Goods do not include any portion of any Open Source Software. As used herein, "Open Source Software" shall mean:
- (a) any software that requires as a condition of use, modification and/or distribution of such software, that such software:
    - (i) be disclosed or distributed in source code form;
    - (ii) be licensed for the purpose of making derivative works;
    - (iii) may only be redistributed free from enforceable intellectual property rights; and/or
  - (b) any software that contains, is derived from, or statically or dynamically links to, any software specified under (a).

11. **Non-conformity of Goods or Services**

- 11.1. If any Good or Service is defective or otherwise not in conformity with the requirements of this Agreement, K&S shall notify Supplier and may, without prejudice to any other right or remedy available to it under this Agreement or at law, at its sole discretion:
- (a) claim a full refund of the price paid under this Agreement; or
  - (b) require Supplier promptly to remedy the non-conformance or to replace the nonconforming Goods with Goods meeting the specifications.
- 11.2. Supplier shall bear all cost of repair, replacement and transportation of the nonconforming Goods, and shall reimburse K&S in respect of all costs and expenses (including, without limitation, inspection, handling and storage costs) reasonably incurred by K&S in connection therewith.
- 11.3. Risk in relation to the nonconforming Goods shall pass to Supplier upon the date of notification thereof.

12. **Ownership and Intellectual Property**

- 12.1. All machinery, tools, drawings, specifications, raw materials and any other property or materials furnished to Supplier by or for K&S, or paid for by K&S, for use in the performance of this Agreement, shall be and remain the sole exclusive property of K&S and shall not be furnished to any third party without K&S' prior written consent, and all information with respect thereto shall be confidential and proprietary information of K&S. In addition, any and all of the foregoing shall be used solely for the purpose of filling orders from K&S, shall be marked as owned by K&S, shall be held at Supplier's risk, shall be kept in good condition and be replaced by Supplier, if necessary, at Supplier's expense, shall be subject to periodic accounting by Supplier as reasonably requested from time to time by K&S, and shall be subject to return promptly upon K&S' request. Supplier agrees to furnish at its own expense all machinery, tools, and raw materials necessary to perform its obligations under this Agreement.
- 12.2. Supplier represents and warrants to K&S that the Goods and Services do not and shall not, alone or in any combination, infringe or violate any patent, trademark, copyright (including portrait rights and moral rights), trade name, trade secret, license or other proprietary right of any other party

(including Supplier's employees and subcontractors), and (ii) that it holds the necessary titles in order to license to K&S any intellectual property right (including patents, trademarks, copyrights, trade names, trade secret, licenses or other proprietary right) of every component of the Goods and/or Services provided to K&S, as a whole or as integrated part of another Good/Service, including but not limited to machinery, tools, drawings, designs, software, demos, moulds, specifications or pieces.

- 12.3. K&S shall retain all rights in any samples, data, works, materials and intellectual and other property provided by K&S to Supplier. All rights in and titles to deliverables (including future deliverables) and other data, reports, works, inventions, know-how, software, improvements, designs, devices, apparatus, practices, processes, methods, drafts, prototypes, products and other work product or intermediate versions thereof produced or acquired by Supplier, its personnel or its agents for K&S under this Agreement (the "Work Product") shall become K&S's property. Supplier shall execute and deliver any documents and do such things as may be necessary or desirable in order to carry into effect the provisions of this Section.
- 12.4. Supplier shall not have any right, title or interest in or to any of K&S's or any of its affiliates' samples, data, works, materials, trademarks and intellectual and other property nor shall the supply of Goods and/or Services alone or in any combination, or the supply of packaging containing K&S's or any of its affiliates' trademarks or trade names give Supplier any right or title to these or similar trademarks or trade names. Supplier shall not use any trademark, trade name or other indication in relation to the Goods or Services alone or in any combination without K&S's prior written approval and any use of any trademark, trade name or other indication as authorized by K&S shall be strictly in accordance with the instructions of and for the purposes specified by K&S or any of its affiliates.
- 12.5. Supplier shall not, without K&S's prior written consent, publicly make any reference to K&S or any of its affiliates, whether in press releases, advertisements, sales literature or otherwise.

13. **Intellectual Property Indemnification**

13.1. Supplier shall indemnify and hold harmless K&S and its affiliates, its agents and employees and anyone selling or using any of K&S's products in respect of any and all claims, damages, costs and expenses (including but not limited to loss of profit and reasonable attorneys' fees) in connection with any third party claim that any of the Goods or Services alone or in any combination or their use infringes any patent, trademark, copyright (including portrait rights and moral rights), trade name, trade secret, license or other proprietary right of any other party or any intellectual property right, or, if so directed by K&S or any of its affiliates, shall defend any such claim at Supplier's own expense.

13.2. K&S shall give Supplier prompt written notice of any such claim. Supplier shall provide all assistance in connection with any such claim as K&S or any of its affiliates may reasonably require.

13.3. If any Goods or Services alone or in any combination, supplied under this Agreement are held to constitute an infringement and if their use is enjoined, Supplier shall, as directed by K&S, but at its own expense: either

- (a) procure for K&S or any of its affiliates or customers the right to continue using the Goods or Services alone or in any combination; or
- (b) replace or modify the Goods or Services alone or in any combination with a functional, non-infringing equivalent.

13.4. If Supplier is unable either to procure for K&S or any of its affiliates the right to continue to use the Goods or Services alone or in any combination or to replace or modify the Goods or Services alone or in any combination in accordance with the above, K&S may terminate this Agreement and upon such termination, Supplier shall reimburse to K&S or any of its affiliates the price paid, without prejudice to Supplier's obligation to indemnify K&S as set forth herein.

14. **Indemnification**

Supplier shall indemnify and hold harmless K&S, its agents and employees and anyone selling or using any of K&S's products, from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, judgments, liabilities, interest,

attorneys' fees, costs and expenses of whatsoever kind or nature (including but not limited to special, indirect, incidental, consequential damages), whether arising before or after completion of the delivery of the Goods or performance of the Services covered by this Agreement, in any manner caused or claimed to be caused by the acts, omissions, faults, breach of express or implied warranty, breach of any of the provisions of this Agreement, or negligence of Supplier, or of anyone acting under its direction or control or on its behalf, in connection with Goods or Services furnished by Supplier to K&S under this Agreement.

15. **Compliance with Laws**

Supplier shall at all times comply with all laws, rules, regulations, and ordinances applicable to this Agreement, including, but not limited to, all fair labor, equal opportunity, and environmental compliance laws, rules, regulations, and ordinances. Supplier shall furnish to K&S any information required to enable K&S to comply with any applicable laws, rules, and regulations in its use of the Goods and Services. If Supplier is a person or legal entity doing business in the United States, and the Goods and/or Services are sold by K&S under federal contract or subcontract, all applicable procurement regulations required by federal statute or regulation to be inserted in contracts or subcontracts are hereby incorporated by reference. Additionally, if Supplier is a person or legal entity doing business in the United States, the Equal Employment Opportunity Clauses set forth in 41 Code of Federal Regulations, Chapters 60-1.4, 60-250.5, and 60-741.5, are hereby incorporated by reference.

16. **Personal Data**

16.1. If Supplier receives or has access to Personal Data, as defined in the European Data Protection Directive 95/46/EC, in the performance of this Agreement and for which a K&S entity or a customer of K&S is the data controller, then Supplier shall:

- (a) process Personal Data only as permitted by this Agreement or required by law;
- (b) keep the Personal Data confidential;

- (c) take appropriate technical, physical and organizational security measures to protect the Personal Data against unauthorized or unlawful processing;
- (d) promptly inform K&S of any actual or suspected security incident involving Personal Data.
- 16.2 To the extent that Supplier uses an authorized subcontractor with access to the Personal Data, Supplier shall obtain subcontractor's written agreement to this provision.
- 16.3 Supplier shall comply with the applicable data protection legislation and all further reasonable instructions provided by K&S with regard to the processing and protection of the Personal Data by Supplier. Supplier shall, upon the termination of this Agreement, return to K&S or securely destroy all records or documents containing Personal Data. Supplier shall remain bound by the provisions of this Section with respect to any Personal Data that remain in its possession.
- 16.4 Insofar as images or other health related records that will be provided by Supplier to K&S under this Agreement contain Personal Data or references thereto, Supplier shall ensure that all such Personal Data and references are removed or made illegible or inaccessible prior to the disclosure to K&S. Where this is not possible Supplier warrants that it has obtained the explicit consent of the data subject concerned with regard to the disclosure of the Personal Data or reference thereto to K&S as well as to the use of those Personal Data or references thereto by K&S. Supplier will permit K&S to use such images or health related records for its business, research and marketing purposes.
17. **Export Control Laws and Customs**
- 17.1. Supplier shall obtain all international and national export licenses or similar permits required under all applicable export control laws and regulations and shall provide K&S with all information required to enable K&S and its customers to comply with such laws and regulations.
- 17.2. On an annual basis, Supplier shall provide K&S with a supplier declaration of origin in relation to the Goods sufficient to satisfy the requirements of (i) the customs authorities of the country of receipt, and (ii) any applicable export licensing regulations, including those of the United States. In particular, the declaration should explicitly mention whether the Goods, or part thereof, have been produced in the United States or originate in the United States. Dual-use Goods, or otherwise classified Goods supplied by Supplier should be clearly identified by their classification code.
- 17.3. For all products that qualify for application of Regional or Free Trade Agreements, General Systems of Preference or other preferential arrangements, it is the responsibility of the Supplier to deliver products with the appropriate documentary evidence (e.g. supplier's declaration, preferential origin certificate/invoice declaration) to confirm the preferential origin status.
- 17.4. Supplier shall mark every Good (or the Good's container if there is no room on the Good itself) with the country of origin. Supplier shall, in marking the goods, comply with the requirements of the customs authorities of the country of receipt. If any Goods are imported, Supplier shall when possible allow K&S to be the importer of record. If K&S is not the importer of record and Supplier obtains duty drawback rights to the Goods, Supplier shall, upon K&S request, provide K&S with documents required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to K&S.
18. **Payment before Delivery**  
If K&S pays for any Goods ordered herein prior to delivery, title in the same shall pass to K&S on payment, and Supplier agrees to segregate such Goods and any raw materials and work in progress relating to this Agreement.
19. **Limitation of Liability.**  
K&S SHALL NOT BE LIABLE TO SUPPLIER FOR ANY LOST REVENUE, LOST PROFITS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES BASED ON BREACH OR DEFAULT UNDER THIS ORDER, EVEN IF K&S HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event shall K&S be

- liable to Supplier, its successors or assigns for damages in excess of the amount due to Supplier for complete performance under this Agreement, less any amounts already paid to Supplier by K&S.
20. **Force Majeure**  
 In the event that Supplier is prevented from performing any of its obligations under this Agreement for reason of force majeure, the performance of the obligation concerned shall be suspended for the duration of the force majeure. If the circumstance constituting force majeure endures for more than thirty (30) days, K&S shall be entitled to terminate this Agreement with immediate effect by written notice to Supplier, and upon such notice, Supplier shall not be entitled to any form of compensation. Force majeure on the part of Supplier shall in any event not include shortage of personnel or production materials or resources, strikes, breach of contract by third parties contracted by Supplier, financial problems of Supplier, nor the inability of Supplier to secure the necessary licenses in respect of software to be supplied or the necessary legal or administrative permits or authorizations in relation to the Goods or Services to be supplied.
21. **Suspension and Termination**  
 21.1. Without prejudice to any other right or remedy available to K&S under this Agreement or at law, K&S shall be entitled at its discretion to suspend the performance of its obligations under this Agreement in whole or in part or to terminate this Agreement in whole or in part by means of written notice to Supplier in the event that:
- (a) Supplier files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit or creditors or similar proceeding;
  - (b) Supplier becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding and such petition or proceeding is not dismissed within thirty (30) days from filing of such petition or proceeding;
- (c) Supplier ceases or threatens to cease to carry on business in the ordinary course; or
  - (d) Supplier breaches any of its obligations under this Agreement or K&S's, in its reasonable discretion, determines that Supplier cannot or shall not deliver the Goods or perform the Services as required.
- 21.2. K&S shall not be liable to Supplier by virtue of such termination.
22. **Confidentiality**  
 22.1. Supplier shall treat all information provided by or on behalf of K&S under this Agreement as confidential. All such information shall be used by Supplier only for the purposes of this Agreement. Supplier shall protect K&S's information using not less than the same degree of care with which it treats its own confidential information, but at all times shall use at least reasonable care. All such information shall remain the property of K&S and Supplier shall, upon K&S's demand, promptly return to K&S all such information and shall not retain any copy thereof.
- 22.2. The existence and the contents of this Agreement shall be treated as confidential by Supplier.
23. **Miscellaneous**  
 23.1. Supplier shall provide Goods and render Services hereunder as an independent contractor and not as an agent of K&S and nothing contained in this Agreement is intended to create a partnership, joint venture or employment relationship between the parties.
- 23.2. Supplier shall not subcontract, transfer, pledge or assign any of its rights or obligations under this Agreement without the prior written consent of K&S. Any such pre-approved subcontracting, transfer, pledge or assignment shall not release Supplier from its obligations under this Agreement.
- 23.3. The rights and remedies reserved to K&S are cumulative and are in addition to any other or future rights and remedies available under the Agreement, at law or in equity.
- 23.4. Supplier shall provide K&S written notice of all product discontinuances twelve (12) months prior to the last order date, including as a minimum K&S part numbers, substitutions, and last order and shipment dates.
- 23.5. Neither the failure nor the delay of K&S to enforce any provision of this Agreement shall constitute a waiver of

- such provision or of the right of K&S to enforce each and every provision of this Agreement. No course or prior dealings between the parties and no usage of the trade shall be relevant to determine the meaning of this Agreement. No waiver, consent, modification or amendment of the terms of this Agreement shall be binding unless made in a writing specifically referring to this Agreement signed by K&S and Supplier.
- 23.6. In the event that any provision(s) of these General Conditions of Purchase shall be held invalid, unlawful or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions hereof. Any such provision held invalid, unlawful or unenforceable, shall be substituted by a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.
- 23.7. In the event of termination, any obligation entered into prior to termination, shall be performed under the terms and conditions of this Agreement. Termination of this Agreement shall not effect either Party's commitments undertaken pursuant to this Agreement prior to its termination.
- 23.8. This Agreement shall be governed by and construed in accordance with the laws of the country or state of incorporation of K&S, as applicable.
- 23.9. Supplier and K&S each consents to (i) the exclusive jurisdiction of the competent courts in the country or state of incorporation of K&S; or (ii), at the option of K&S, of the competent courts of the place of residence of Supplier or (iii), at the option of K&S, for arbitration in which case Section 23.10 applies and Supplier hereby waives all defenses of lack of personal jurisdiction and forum non-conveniens.
- 23.10. If so chosen by K&S in accordance with Section 23.9, any dispute, controversy or claim arising out of or in connection with this Agreement, or its breach, termination or invalidity shall be finally settled solely under the International Chamber of Commerce Rules of arbitration, which Supplier and K&S declare to be known to them. Supplier and K&S agree that: (i) the appointing authority shall be the ICC-International Chamber of Commerce of Paris, France; (ii) there shall be three (3) arbitrators; (iii) the place of arbitration

shall be a place in the country of residence of the Supplier or, at the option of K&S, a place in the country of residence of K&S; (iv) the language to be used in the arbitration proceedings shall be English; and (v) the material laws to be applied by the arbitrators shall be the laws of the country or state of incorporation of K&S.

- 23.11. The United Nations Convention on International Sale of Goods shall not apply to this Agreement.

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