

The logo consists of the letters "KLH" in a bold, white, sans-serif font, positioned inside a solid red square.

**KLH**<sup>®</sup>

**MADE FOR BUILDING**  
BUILT FOR LIVING

**KLH US HOLDING CORP.**

**GENERAL TERMS AND CONDITIONS OF SALE**

A large, semi-transparent watermark seal is located in the bottom right corner. It features a circular border with the word "ORIGINAL" repeated twice. A diagonal banner across the center of the seal contains the text "100% KLH".

**100% KLH**<sup>®</sup>



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## GENERAL TERMS AND CONDITIONS OF SALE

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### 1. APPLICABILITY

- (a) These terms and conditions of sale (these "Terms") are the only terms that govern the sale of cross-laminated timber panels and related customized goods ("Products") and services ("Services") by KLH US Holding Corp., with its principal address at 1500 Broadway, Suite 1902, New York, NY 10036 ("Company") to the buyer named on purchase order or order confirmation accompanying these Terms ("Customer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- (b) All purchase orders are subject to written acceptance by Company. Company's quotation, purchase order confirmation, or invoice, as the case may be (the "Sales Confirmation") 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 the Customer's general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms. In case of a conflict between these Terms
- (c) and the terms in the Sales Confirmation, the terms of the Sales Confirmation shall govern.
- (d) Unless otherwise set forth in Company's quote, all quotations for Products are valid for a period of 3 (three) months from the date of issue. Subsequent modifications in quantity or quality, if such are requested by Customer, will cause a modification of the quoted price. Drawings and samples enclosed with any quotation remain the property of Company. All drawings and samples shall be treated confidentially by Customer and must be returned to Company after usage.
- (e) Customer acknowledges and agrees that the Products are customized products tailored specifically for each Customer. Purchase orders submitted by Customer and accepted by Company and quotes submitted by Company and accepted by Customer are non-cancelable and require Company's written consent, at Company's sole discretion. Customer shall bear all costs associated with the cancellation or modification of the Order.
- (e) Notwithstanding anything to the contrary contained in this Agreement, Company may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.

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### 2. PRICE

- (a) Products' prices ("Price") will be governed by special price quotes made to Customer in writing in Company's quote. All price quotations are DAP Customer's designated site (per Incoterms 2020) (the "Delivery Point"). Changes in price and quantity made by Company in the range of plus or minus five percent (5%) of the price or quantities agreed upon in the Sales Confirmation shall be deemed accepted by Customer.
- (b) Customer agrees to reimburse Company for all reasonable travel and out-of-pocket expenses incurred by Company in connection with the performance of the Service unless otherwise set forth in the quote.
- (c) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, including but not limited to import
- (d) taxes or tariffs, and charges of any kind imposed by any Governmental Authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs, and taxes; provided that, Customer shall not be responsible for any taxes imposed on, or with respect to, Company's income, revenues, gross receipts, personal or real property, or other assets.
- (d) Company may without notice to Customer increase the price of the Products by the amount of any new or increased tax, duty (excluding franchise, net income and excess profits taxes) or tariff which Company may be required to pay on the manufacture, sale, transportation, delivery, export, import or use of the Products or the materials required for their manufacture or which affects the cost of such materials.

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### 3. TERMS OF PAYMENT

- (a) Unless otherwise set forth in Company's Sales Confirmation, Customer shall pay thirty percent (30%) of the invoiced Price by wire transfer in immediately available funds to the bank account designated in Company's invoice on the first business day following receipt of Company's invoice by Customer as a down payment ("Down Payment"). Sixty percent (60%) of the invoiced Price shall be paid by wire transfer in immediately available funds to the bank account designated in Company's invoice on the first business day following Company's notification to Customer that production will begin in two (2) weeks (the "Production Notice"). The remaining ten (10%) percent of the invoiced Price shall be paid in the same manner on the first business day following the delivery of the Products at the Delivery Point. These payment terms shall only apply on the condition that Customer has obtained secured financing via credit insurance or presentation of an irrevocable banker's payment guarantee. Otherwise, Customer shall prepay the Price in full prior to delivery. If delivery of the Products at the Delivery Point has been delayed by the Customer or the reason for the delay falls within the Customer's responsibility, the remainder of the Price shall be paid within fourteen (14) days after Company notifies Customer that Products are ready for dispatch.
- (b) Customer shall pay interest on all late payments at the rate of 1.5% per month or the highest rate permissible under applicable law,
- (c) calculated daily and compounded monthly. Customer shall reimburse Company for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. In addition to all other remedies available under these Terms or at law (which Company does not waive by the exercise of any rights hereunder), Company shall be entitled to suspend the delivery of any Products or performance of any Services and stop Products in transit if Customer fails to pay any amounts when due hereunder and such failure continues for 7 days following written notice thereof.
- (c) Company may without notice change or withdraw extensions of credit at any time.
- (d) Company shall have the right of recoupment with respect to all amounts Customer owes to Company and all amounts Customer owes to Company under this Agreement.
- (e) Customer does not enjoy a right of set-off and any circumstances and shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Company, whether relating to Company's breach, bankruptcy, or otherwise.

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## GENERAL TERMS AND CONDITIONS OF SALE

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### 4. DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- (a) The Products will be delivered within a reasonable time after the receipt of Company's purchase order conformation or acceptance of Company's quote by Customer, unless otherwise set forth in Company's Sales Confirmation. Company shall not be liable for any delays, loss, or damage in transit. All delivery dates are approximate; time shall not be of the essence.
- (b) Partial deliveries are allowed, and Company shall have the right to submit separate invoices for each shipment.
- (c) Unless otherwise set forth in Company's Sales Confirmation, Company shall deliver the Products DAP (per Incoterms 2020) Customer's site (the "Delivery Point") using Company's standard methods for packaging and shipping such Products. Title and risk of loss with regards to the Products shall pass to Customer upon delivery at the Delivery Point, cleared for import but not unloaded from the means of transport.
- (d) Customer will be invoiced for and shall pay all freight, transportation, shipping, insurance and handling charges, duties, and taxes, including any applicable VAT, sales, personal property, ad valorem, and other taxes, duties, levies or charges imposed by any governmental authority, irrespective of whether applicable law makes such items the responsibility of the Customer or seller, but excluding any taxes payable by Company with respect to its net income.
- (e) If for any reason Customer fails to accept delivery of any of the Products on the date fixed pursuant to Company's notice, or if Company is unable to deliver the Products at the Delivery Point on such date because Customer has not provided appropriate in-

structions, documents, licenses or authorizations: (i) risk of loss to the Products shall pass to Customer; (ii) the Products shall be deemed to have been delivered; and (iii) Company, at its option, may store the Products until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage, and insurance).

- (f) Company shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only.

- (g) With respect to the Services, Customer shall (i) cooperate with Company in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Company, for the purposes of performing the Services; (ii) respond promptly to any Company request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Company to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Company may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start. Company has the right to provide the Services through a third-party service provider hired by Company in its sole discretion to perform the Services owed to Customer.

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### 5. SECURITY INTEREST

- (a) As collateral security for the payment of the purchase price of the Products, Customer hereby grants to Company a lien on and first priority security interest in and to all of the right, title, and interest of Customer in, to, and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code. Such Interest shall remain in force until payment in full of the entire purchase price for the Products and any other amounts due to the Company by Customer.

- (b) If so requested by Company, the Customer shall deliver to Company, in form and substance satisfactory to Company, and duly executed as required by Company, financing statements and other security interest perfection documentation in form and substance satisfactory to Company, duly filed under the UCC in all jurisdictions as may be necessary, or in Company's opinion, desirable, to perfect Company's security interest and lien in the Collateral, in order to establish, perfect, preserve and protect Company's security interest as a legal, valid and enforceable security interest and lien, and all property or documents of title, in cases in which possession is required for the perfection of Company's security interest.

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### 6. CUSTOMER'S ACTS OR OMISSIONS

If Company's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Company shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay. Customer shall be liable and reimburse Company for any costs, charges, or losses suffered as a result from a Customer caused delay. If Customer wrongfully rejects or revokes acceptance of the Products or fails to make payment due on or before delivery or repudiates all or part

of the contract for any Products shipped, Company may withhold delivery, or stop delivery of Products or cancel the contract and/or request and/or sue for damages at Company's sole option. If Customer causes a delay in the delivery of Products or any part thereof, Company, at its exclusive option, may extend the period of delivery by a period reasonable in consideration of the circumstances, and, if the delay causes Company inconvenience, Company has the right to cancel the delivery of the Products whose delivery is delayed. Company reserves the right to recoup any expenses incurred or damages suffered by Company as a result of such delays.

## GENERAL TERMS AND CONDITIONS OF SALE

### 7. INSPECTION AND REJECTION OF NONCONFORMING PRODUCTS

- (a) Customer shall inspect the Products upon 5 days of receipt of the Products at the delivery Point or upon 5 days of complete installation by the Company, if installation services are owed under the Sales Confirmation ("Inspection Period"). Customer will be deemed to have accepted the Products unless it notifies Company in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Company. "Nonconforming Products" means only the following: Product shipped is different than identified in the Sales Confirmation; it does not materially comply with the specifications, or contains a material defect in material or workmanship.
- (b) If Customer timely notifies Company of any Nonconforming Products, Company shall, in its sole discretion, (i) repair or replace such Nonconforming Products with conforming Products, or (ii) credit or refund the Price for such Nonconforming Products, to-

gether with any reasonable shipping and handling expenses incurred by Customer in connection therewith. At Company's request, Customer shall ship, at its expense and risk of loss, the Nonconforming Products to Company's facility as determined by Company in its reasonable discretion. If Company exercises its option to replace Nonconforming Products, Company shall, after receiving Customer's shipment of Nonconforming Products, ship to Customer, at Company's expense and risk of loss, the replaced Products to the Delivery Point.

- (c) Customer acknowledges and agrees that the remedies set forth in Section 7(b) are Customer's exclusive remedies for the delivery of Nonconforming Products. Except as provided under Section 7(b), all sales of Products to Customer are made on a one-way basis and are customized Products specifically made for Customer and Customer has no right to return Products purchased under this Agreement to Company.

### 8. LIMITED WARRANTY

- (a) Unless otherwise set forth in Company's Sales Confirmation, Company warrants to Customer that for a period of six (6) months from the date of delivery of the Products at the Delivery Point, or if applicable, installation, ("Warranty Period"), that such Products will materially conform to the specifications set forth the Sales Confirmation or Company's published specifications in effect at the time of purchase and will be free from material defects in material and workmanship, provided the Products are used for the purpose intended, have been installed in a professional and skilled manner, and are maintained, handled, and cared for in accordance with the written instructions and manuals supplied by Company or the manufacturer of the Products. Defects caused by inadequate installation, maintenance, or repairs or repairs carried out without the written consent of Company are not covered under this Limited Warranty. Deviations that are customary in the trade or minor deviations that are common for technical reasons shall be no defects hereunder and are excluded from this Limited Warranty.
- (b) The warranty in Section 8(a) is provided in lieu of all express or implied warranties, and Company specifically disclaims any and all implied warranties of merchantability or fitness for a particular purpose. No agent, distributor, or employee of Company as authority to extend the scope of this warranty or make any other representation, promise or warranty with respect to the Products.
- (c) Company warrants to Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
- (d) Except for the services warranties set forth in Section 8(c), Company makes no warranties whatsoever with respect to the services. All other warranties, express and implied, are expressly disclaimed.
- (e) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Products. Third Party Products are not covered by the warranty in Section 8(a). For the avoidance of doubt, Company makes no representations or warranties with respect to any third-party product, including any (a) warranty of merchantability; (b) warranty of fitness for a particular purpose; (c) warranty of title; or (d) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.

- (f) The Company shall not be liable for a breach of the warranties set forth in Section 8(a) or Section 8(c) unless: (i) Customer gives written notice of the defective or non-conforming Products or Services, as the case may be, reasonably described, to Company within seven (7) days of the time when Customer discovers or ought to have discovered the defect; (ii) if applicable, Company is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 8(a) to examine such Products and Customer (if requested to do so by Company) returns such Products to Company's place of business at Company's cost for the examination to take place there; and (iii) Company reasonably verifies Customer's claim that the Products or Services are defective or non-conforming.
- (g) The Company shall not be liable for a breach of the warranty set forth in Section 8(a) if: (i) Customer makes any further use of such Products after giving such notice; (ii) the defect arises because Customer failed to follow Company's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Products; or (iii) Customer either directly or through a third-party alters or repairs such Products without the prior written consent of Company; or (iv) if the Product is damaged as a result of acts of Customer or third parties, acts of God or Nature, abuse, misapplication or other similar events.
- (h) Subject to Section 8(f) and Section 8(g) above, with respect to any such Products during the Warranty Period, Company shall, in its sole discretion, either: (i) repair or replace such Products (or the defective part) or (ii) credit or refund the price of such Products at the pro rata contract rate provided that, if Company so requests, Customer shall, at Company's expense, return such Products to Company.
- (i) Subject to Section 8(f) above, with respect to any Services subject to a claim under the warranty set forth in Section 8(c), Company shall, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate.
- (j) The remedies set forth in Section 8(h) and Section 8(i) are the Customer's sole and exclusive remedy and Company's entire liability for any breach of the limited warranties set forth in Section 8(a) and Section 8(c), respectively.

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## GENERAL TERMS AND CONDITIONS OF SALE

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### 9. LIMITATION OF LIABILITY

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| <p>(a) In no event shall Company be liable to Customer or any third party for any loss of use, revenue or profit, or for any consequential, indirect, incidental, special, exemplary, or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damages were foreseeable and whether or not Company has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.</p> <p>(b) In no event shall Company's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed two times the total of the amounts paid to Company for the products and services sold hereunder or \$1,000,000.00, Whichever is less.</p> <p>(c) The limitation of liability set forth in Section 8(b) shall not apply to (i) liability resulting from Company's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Company's acts or omissions.</p> | <p>(d) It is agreed and acknowledged that the provisions of these Terms allocate the risks between Company and the Customer in a fair and equitable manner, Customer's pricing reflects this allocation of risk, and but for this allocation and limitation of liability, Customer would not have agreed to sell the Products to Customer.</p> <p>(e) In jurisdictions that limit the scope of, or preclude limitations or exclusions of, remedies or damages or of liability such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.</p> |
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### 10. INDEMNIFICATION

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| <p>(a) Subject to the limitations set forth in these Terms, Customer agrees to diligently defend, and hold harmless and indemnify, Company and its directors, officers, employees, shareholders, affiliates, agents and representatives from and against any and all liability, claims, lawsuits, losses, demands, damages, costs and expenses, including, without limitation, reasonable attorney's fees and costs, expert's fees and costs, and court costs, (the "Losses") arising from any third party claim (i) due to any use of the Products of any nature, except to the extent such Losses have been incurred as a direct result of a breach of Company's warranty, Company's willful and knowing infringement of the intellectual property rights of any third party, or Company's gross negligence or willful misconduct, or (ii) arising out of any breach of any of Customer's representations or covenants or other terms contained in these Terms or any contract in which these Terms are incorporated or to which these Terms are attached or made part of, or (iii) arising out of the improper use, storage, handling, transportation, maintenance, modification or alteration of Products by or on behalf of Customer or any third party; or (iv) arising out of a design or specification which is provided by or on behalf of Customer or any modification of the Product made by or on behalf of Customer.</p> <p>(b) Subject to the limitations set forth in these Terms, Company agrees to diligently defend, and hold harmless and indemnify, Customer</p> | <p>mer and its directors, officers, employees, shareholders, affiliates, agents and representatives from and against any and all Losses arising directly or indirectly out of (i) Company's strict liability, negligence or willful misconduct with respect to any product liability claims, or (ii) any material breach or misrepresentation of any of Company's representations or covenants or other terms contained in these Terms or any contract in which these Terms are incorporated or to which these Terms are attached or made part of.</p> <p>(c) Each indemnitee shall notify the indemnitor in writing within 10 days of the receipt of any claim, suit or proceeding, including any incidents involving personal injury or damage to property. The indemnitee shall cooperate with the indemnitor with regard to the defense of any suit or threatened suit. In the event of a claim involving an accident or safety issue, the indemnitor shall make available all statements, reports and tests concerning the incident. The indemnitor may assume control of the defense of any such claim, proceeding or suit and shall have the authority to settle or otherwise dispose of any such suit or threatened suit, and to appeal any adverse judgment which may be entered, except that the indemnitor shall obtain the indemnitee's prior written consent to any settlement.</p> |
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### 11. INSURANCE

During the term of this Agreement and for a period of 3 years thereafter, Customer shall pay for and maintain comprehensive general liability insurance with financially sound and reputable insurers, including insurance coverage for premises operations, independent contractors, completed operations, contractual liability, personal injury liability, property damage including fire, casualty, and flood (broad form), bodily injury (occurrence in lieu of accident coverage) in the following amounts:

Liability Insurance -- \$3,000,000/total liability coverage; \$1,000,000/each occurrence

Personal Injury -- \$2,000,000/total liability coverage; \$1,000,000/each occurrence

Property Damage -- \$2,000,000/total liability coverage; \$1,000,000/each occurrence

Products-Completed Operations -- \$2,000,000/total liability coverage

Upon Company's request, Customer shall provide Company with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Company as an additional insured. Customer shall provide Company with 30 days' advance written notice in the event of a cancellation or material change in Customer's insurance policy. Except where prohibited by law, Customer shall require its insurer to waive all rights of subrogation against Company's insurers and Company.

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## GENERAL TERMS AND CONDITIONS OF SALE

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### 12. COMPLIANCE WITH LAW

Customer shall comply with all applicable laws, regulations, and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. [Customer shall comply with all export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of

the Products by Customer.] Customer assumes all responsibility for shipments of Products requiring any government import clearance. Company may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Products.

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### 13. TERMINATION

In addition to any remedies that may be provided under these Terms, Company may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (a) fails to pay any amount when due under this Agreement and such failure continues for 7 days after Customer's receipt of written notice of

nonpayment; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) 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.

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### 14. WAIVER

No waiver by Company of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Company. 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.

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### 15. CONFIDENTIAL INFORMATION AND PROPRIETARY RIGHTS

- (a) All non-public, confidential or proprietary information of Company, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Company to Customer, 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 use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Company in writing. Upon Company's request, Customer shall promptly return all documents and other materials received from Company. Company shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.
- (b) All inventions (whether patented or not), methods, processes, know-how, layouts, models, designs, sketches, drawings, blueprints, patterns, trade secrets, copyrights, mask works, trade names, registered and unregistered trademarks and service marks, proprietary materials or other intellectual property and all improvements or modifications relating to any of the foregoing,

incorporated into or in any manner associated with or attached to the Products or otherwise provided to Customer (the "Company Intellectual Property") are and shall at all times remain the sole property of Company or its Licensors. Customer agrees not to (a) modify, translate, decompile, reverse engineer, copy or duplicate the Company Intellectual Property, nor to remanufacture or have remanufactured any products which incorporate the Company Intellectual Property, (b) to use any of Company's trademarks, service marks or trade names in any manner without the prior written permission of Company, or (c) to infringe, or permit a third party to infringe, any such Company Intellectual Property or to adapt the Products in any way or to create a derivative work of any of the Company Intellectual Property, except as may be authorized in writing by Company. Any act or omission of Customer contrary to the provisions of this Section 15 shall be a material breach of these Terms.

- (c) Unless otherwise agreed to in writing, all tools, models, plans, blueprints or other devices and/or documents used and/or developed by Company (the "Tools") in order to fulfill any Order or Special Order are the property of the Company, even if the cost of development and/or manufacturing of such Tools was wholly or partially borne by the Customer.

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**GENERAL TERMS AND CONDITIONS OF SALE**

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16. FORCE MAJEURE

No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to Company hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; and (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate

transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 5 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 60 consecutive days following written notice given by it under this Section 16, either party may thereafter terminate this Agreement upon 7 days' written notice, however already accepted purchase orders may not be terminated at all hereunder.

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17. ASSIGNMENT

Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Company. Any purported assignment or delegation in violation

of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

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18. 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.

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19. 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 these Terms.

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20. GOVERNING LAW

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict

of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

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21. SUBMISSION TO JURISDICTION

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 New York in each

case located in the City of New York, New York County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.





GENERAL TERMS AND CONDITIONS OF SALE

22. INJUNCTIVE RELIEF

In the event of a violation or threatened violation of Company's proprietary rights, Company shall have the right, in addition to such other remedies as may be available pursuant to law or this Agreement, to temporary or permanent injunctive relief enjoining

such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that Company would suffer irreparable harm.

23. 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), email or facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). 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.

24. 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.

25. 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: Limitation of Liability, Indemnification, Insurance,

Compliance with Laws, Confidential Information and Proprietary Rights, Governing Law, Submission to Jurisdiction, Injunctive Relief and Survival.

26. 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.







**KLH US HOLDING CORP.**

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