

KERN LIEBERS U.S.A. Inc.  
1510 Albon Road, Holland, Ohio 43528  
KERN LIEBERS TEXAS, INC.  
400 East Nolana Loop, Pharr, TX 78577

(THE "SELLER")  
SALES TERMS AND CONDITIONS

1. **TERMS AND CONDITIONS:** All descriptions, quotations, proposals, offers, acknowledgments, acceptances, and sales of Seller's products are subject to and shall be governed exclusively by the terms and conditions stated herein and create the basis of the contract between Buyer and Seller. An offer or proposal is not binding upon Seller until executed by a duly authorized representative of Seller. Buyer's acceptance of any offer to sell is limited to these terms and conditions. Any terms or conditions, in addition to, or inconsistent with those stated herein, proposed by Buyer in any acceptance of any offer by Seller are deemed material alterations and hereby objected to and rejected by Seller. No such additional, different, or inconsistent terms and conditions shall become part of the contract between the Buyer and Seller unless expressly assented to in writing by Seller. Acceptance of Seller's products shall constitute acceptance of and agreement to all terms and conditions set forth herein. Seller reserves the right to reject any or all orders for products, and in no event shall Seller be obligated to provide products pursuant to any offer to purchase, whether made by Buyer or otherwise. If these terms and conditions are deemed an acceptance of Buyer's prior offer, Seller's acceptance is expressly conditional on Buyer's assent to Seller's terms.
2. **PAYMENT:** Unless agreed upon otherwise in writing, [KL's payment terms]. All costs and expenses incurred by Seller as a result of nonpayment or delinquent payment by Buyer, including collection costs, interest, and reasonable attorney fees shall be paid by the Buyer. Amounts past due shall be subject to an interest charge equal to the prime commercial loan rate for short term loans as then quoted by \_\_\_\_\_.
3. **DELIVERY:** All shipments will be F.O.B. \_\_\_\_\_ unless otherwise stated on the face of this contract. Risk of loss shall pass to Buyer at F.O.B. Seller's place of business. Shipments will not be insured except at Buyer's written request and expense. Title shall not pass to Buyer until final payment is received and credited against Buyer's account by Seller. Standard packing for domestic shipment is included in quoted price. Partial shipments shall be allowed. All claims for loss or damage during shipments must be made immediately against the carrier. Any claims by Buyer for omissions or shortages in a shipment shall be waived unless Seller receives notice thereof within ten (10) days after Buyer's receipt of shipment. Deliveries are to be made both in quantities and at times as agreed upon in writing by Buyer and Seller. Buyer may, after obtaining written confirmation from Seller, change delivery schedules. Any additional costs or expenses incurred as a result of said changes shall be paid for by Buyer.
4. **RIGHT OF INSPECTION:** Buyer shall have the right to inspect the products manufactured by Seller prior to delivery. Said inspection shall be conducted by Buyer at Seller's plant. Any expenses incurred by Buyer to conduct said inspection shall be paid for by Buyer.
5. **RETURNS/CANCELLATION:** Unless otherwise agreed in advance in writing, standard products returned are subject to a restocking charge of \_\_\_\_%. All freight charges with respect to such returned products must be prepaid by the Buyer. All returns must receive prior authorization in order to be returned. **Unless otherwise agreed, Buyer may cancel all or any part of an order by written notice received by Seller. On receipt of such cancellation notice, all work on the order or part thereof canceled shall be stopped as promptly as is reasonably possible. Buyer will then be invoiced for, and will pay to Seller as liquidated damages, a cancellation charge. For completed items that charge will be equal to established prices. For items not completed, the charge will be equal to 120% of Seller's full cost including burden and overhead costs as determined by Seller in accordance with Seller's standard accounting practices, plus a charge for any packing and storage, less a credit for the balance of the material as scrap.**
6. **TAXES:** Unless otherwise indicated, all prices and charges are exclusive of excise, sales, use, property, occupational, federal, state, or other taxes which may be imposed by any taxing authority upon the manufacture, sale or delivery of the products sold hereunder. If any such taxes must be paid by Seller or if Seller is liable for collection of such tax, the amount thereof shall be added to the invoice price for the products sold hereunder. Buyer agrees to pay all such taxes or to reimburse Seller therefore upon receipt of Seller's invoice. If Buyer claims exemption from any taxes, Buyer shall submit to Seller a "Tax Exempt Certificate".
7. **PRICING:** Only written price quotations shall be binding upon the Seller **and such written quotations shall apply only to the specific quantity and delivery schedule shown.** Written quotations will be honored to their expiration date, or in the absence of a specific date, for a period of \_\_\_\_ days.
8. **FORCE MAJEURE:** Seller does not assume the risk of and shall not be liable for a delay or failure to perform any of Seller's obligations by reason of circumstances beyond the reasonable control of Seller (hereinafter "Events of Force Majeure"). Events of Force Majeure shall include without limitation accidents, acts of God, strikes, labor disputes, acts, laws, rules or regulations of any government or government agency, fires, floods, delays or failures in delivery of carriers or suppliers, shortages or a substantial change in the cost of materials and any other cause beyond Seller's control.
9. **WARRANTY:** Seller warrants that all products furnished under this contract shall comply with all specifications, samples, drawings, written testing and sampling procedures, designs or other requirements (collectively "Specifications") provided by Buyer to Seller and approved by Seller in writing. If Seller complies with the specifications provided by Buyer, then Seller shall not have any liability.
10. **LIMITATION OF LIABILITY: SELLER'S WARRANTY IS LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCT MANUFACTURED BY SELLER. SELLER DISCLAIMS ALL OTHER WARRANTIES AND PRODUCT LIABILITY, EXPRESS, IMPLIED, STATUTORY OR UNDER A TREATY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.** Seller is not liable for any damages to Buyer or Buyer's customers or any third party, whether arising out of tort or contract, including but not limited to, lost or anticipated profits or business, production line shutdowns or interruption of Buyer's or Buyer's customer's business, late delivery, unabsorbed overhead, interest on claims, product development, qualification, engineering or similar costs, facilities and equipment purchase or rental costs, unamortized capital expenditures, or general and administrative or burden charges or other special, incidental, consequential, direct or indirect, compensatory or punitive damages, even if Seller is advised of the possibility of such loss or damages. Seller's cumulative liability shall not exceed the fee paid by Buyer under this contract. Seller's limitation of warranty shall survive termination of this contract. **SELLER'S LIMITATION OF WARRANTY SHALL APPLY EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.** Any warranties that cannot be excluded are limited to one (1) year or the shortest period permitted by law, whichever is shorter. Seller's duration of the warranty shall not be extended by any repair or replacement work performed by Seller during the warranty period. Seller shall not be liable for normal wear and tear of the product.
11. **WARRANTY VOID:** Seller's warranty shall be void and of no effect if: 1) Buyer alters, modifies or repairs the products; 2) Buyer uses the products in a manner not intended by Seller or in a manner not disclosed by Buyer; or 3) the breach resulted from the actions or omissions by another party or misuse of the products.
12. **INDEMNITY:** Buyer, its officers, agents, representatives or employees, its successors and assigns, and its customers shall indemnify and hold Seller, its officers, agents, representatives and employees, shareholders and directors harmless from and against any and all claims, losses, damages (direct, indirect, consequential, secondary, incidental or punitive), liabilities, costs, and expenses, including attorney fees and other costs of defending any action, that Seller may sustain or incur as a result of any claim of breach of contract, tort (including negligence and strict liability), breach of warranty, or other theories of law, whether direct or indirect, arising in connection with the use of the products furnished hereunder provided the products are manufactured pursuant to the Specifications provided by Buyer.
13. **INTELLECTUAL PROPERTY:** Unless independently developed or generally known to the public through no act of Buyer, Buyer shall have no right to use Seller's trademarks, trade names, intellectual property or confidential information in any of Buyer's business activities, including but not limited to, advertising or promotional materials and Buyer is prohibited from passing on the trademarks, trade names, intellectual property or confidential information to its vendors, customers or other third parties.

14. **INFRINGEMENT:** Seller warrants that the goods purchased hereunder shall be delivered free of any rightful claim for infringement of any United States patent or trademark, provided however, that this warranty shall not apply with respect to claims for patent and trademark infringement to the extent that any goods purchased hereunder are: (1) manufactured to Buyer's specifications, or (2) used in a manner not reasonably anticipated by Seller.
15. **DRAWINGS, SOFTWARE AND OTHER INFORMATION:** All drawings, layouts, diagrams, specifications, software and other material or information furnished to Buyer by Seller in connection with this contract shall remain the exclusive property of the Seller and Buyer agrees to treat all such materials and information as confidential and proprietary to Seller unless written permission to the contrary is given by Seller.
16. **WAIVER:** No failure by the Seller to insist upon strict compliance with any term of this contract between the Seller and Buyer, to exercise any option, enforce any right, or seek any remedy under the contract shall constitute a waiver of Seller's rights under this contract. No custom, practice, course of dealing or usage of trade at variance with any provisions of this contract between the Seller and Buyer shall affect or constitute a waiver of Seller's rights under this contract. Seller does not waive any defense that it may have, including the doctrine of comparative negligence.
17. **SEVERABILITY:** If any provision of this contract is determined by a court or arbitrator to be invalid or unenforceable, such determination shall not affect any of the other remaining provisions of this contract which shall remain in full force and effect.
18. **ENTIRE AGREEMENT:** The terms and conditions set forth herein, together with any amendments, modifications and any different terms or conditions expressly accepted by an authorized representative of Seller in writing, shall constitute the entire agreement concerning the products sold, and there are no oral or other representations or agreements which pertain thereto. The terms of this contract take precedent over and supersede any course of dealings, usage of trade or course of performance.
19. **CAPTIONS:** Captions to the various sections of this contract between Seller and Buyer are not part of the context hereof, but are labels to assist in locating those sections and shall be ignored in construing this contract.
20. **SETOFF/CHARGE BACKS:** Buyer and its affiliates/subsidiaries shall have no recourse to collect, setoff, recoup, counterclaim or adjust Seller's account for any alleged non-payment, recall, service fix, safety campaign or similar action, as the result of suspected, defective or allegedly defective products sold by Seller. Seller shall have no obligation to reimburse Buyer for any costs or expenses arising from such aforementioned actions.
21. **ASSIGNABILITY:** Any attempted assignment by Buyer of this contract in whole or in part will be void and of no effect, except with written consent of Seller.
22. **ARBITRATION:** Any disagreement, controversy or claim arising out of or relating to this contract between Buyer and KL USA, Inc. or Quality Spring Manufacturing, Inc. shall be settled by binding arbitration in Lucas County, Ohio pursuant to the laws of the State of Ohio, without regard to conflict of law principles. Any disagreement, controversy or claim arising out of or relating to this contract between Buyer and KL Texas, Inc. shall be settled by binding arbitration in \_\_\_\_\_ county, Texas, pursuant to the laws of the State of Texas, without regard to conflict of law principles. The United Nation Convention on Sale of Goods shall not apply. Costs shall be paid equally by the parties and a judgment may be entered in any court having jurisdiction thereof.
23. **CONFIDENTIALITY:** The Buyer agrees to treat the terms and conditions of this contract as confidential information which shall be held in strictest confidence and Buyer warrants that no such information has been or will be disclosed to third parties except as authorized by Seller in writing. Buyer shall safeguard, preserve and maintain the confidential nature of all know-how, trade secrets and other confidential information disclosed to it by Seller whether prior to, pursuant to or after this contract is entered into between Buyer and Seller.
24. **MOST FAVORED NATION CLAUSE:** Seller shall have no obligation to sell products to Buyer on as favorable conditions as Seller may have with any other customer or buyer for the same or similar goods or services.
25. **ADEQUATE ASSURANCES:** At no charge to Seller, Buyer will provide adequate assurances of its financial viability and/or ability to perform under this contract within ten (10) days of a written demand by Seller.
26. **TERMINATION OF CONTRACT:**
  - 1) Seller has the right to terminate this contract or releases "without cause", without liability to Buyer, if Seller gives [xxx] days notice.
  - 2) Seller has the right to terminate this contract or releases "for cause", without liability to Buyer, upon an event of Default by Buyer. "Default" means i) Buyer fails to make timely payments, ii) Buyer's failure to comply with any terms and conditions of this contract; iii) Buyer's failure to give Seller, upon request, reasonable assurances of Buyer's future performance; iv) Buyer repudiates this contract; v) Buyer becomes insolvent, suspends its operations, a petition is filed or proceeding commenced by or against Buyer under any state or federal law related to bankruptcy, arrangement, reorganization receivership or assignment for the benefit of creditors, is adjudicated a bankrupt, liquidated or dissolved; or vi) any other event which causes reasonable doubt as to Buyer's ability to render due performance hereunder. If, after termination for Default, it is determined that Buyer is not in Default, the rights and obligations of the parties will be the same as if this contract was terminated "without cause".
  - 3) Regardless of whether Seller terminates this contract "without cause" or "for cause", Seller shall not liable for any damages to Buyer, directly or indirectly, or Buyer's customers or any third party, including but not limited to, lost or anticipated profits or business, production line shutdowns or interruption of Buyer's or Buyer's customer's business, late delivery, unabsorbed overhead, interest on claims, product development, qualification, engineering or similar costs, facilities and equipment purchase or rental costs, unamortized capital expenditures, or general and administrative or burden charges or other special, incidental, consequential, direct or indirect, compensatory or punitive damages, even if Seller is advised of the possibility of such loss or damages.
27. **CONFLICT:** In the event of a conflict between the terms of this contract and the terms of any acknowledgment, invoice or other document delivered by Buyer to Seller relating to the subject matter of this contract, whether delivered to Seller prior to or contemporaneously with or after this contract, the terms of this contract shall control.
28. **SURVIVAL:** The provisions in articles 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 22, 23, 24, 26, 27, 28 and 30 shall survive the expiration or termination of this contract.
29. **INCREASE IN COSTS:** For all products provided by Seller to Buyer, if there is an increase in the price in raw materials, shipping, labor and/or services, engineering or technical expenses, then Seller has the right to pass on all increase in prices to Buyer. Seller shall notify Buyer 30 days before the increase in price is passed on to the Buyer. Buyer's acceptance of the shipment of the product is acceptance of the increase in price.
30. **STATUTE OF LIMITATIONS:** Buyer is prohibited from bringing any claim, action or proceeding arising out of the warranty set forth herein more than one (1) year after the date on which the alleged breach of warranty occurred or the shortest period permitted by any applicable federal, state or foreign government, whichever is shorter.
31. **RELATION OF THE PARTIES:** Seller and Buyer are independent contractors and nothing in this contract shall make either party an agent, joint venturer or legal representative of the other. There are no third party beneficiaries to this contract.
32. **RECLAMATION OF GOODS:** In addition to any rights under UCC 2-702 or federal law, Seller shall have the right to reclaim the products within forty-five (45) days after Buyer's receipt thereof if Buyer becomes insolvent or is unwilling or unable to pay for the products.
33. **SECURITY AGREEMENT:** Acceptance of these terms and conditions by Buyer, in writing or through the course of business, shall constitute a legally binding security agreement between Buyer and Seller and Seller shall have the right to file a UCC financing statement.