



## **KALANI STANDARD PURCHASE ORDER TERMS AND CONDITIONS**

Version 1 Updated November 10, 2015

1. **ACCEPTANCE AND COMPLETE AGREEMENT.** This order is Buyer's offer to Seller and is not an acceptance by Buyer of any offer to sell by Seller or of any terms and conditions contained in any such offer. Acceptance of this offer by Seller should be made by (a) executing and returning the acknowledgement copy, or (b) delivering any of the goods ordered herein or (c) rendering any of the services ordered herein. Any additional or different terms proposed by Seller are objected to and rejected unless expressly assented to in writing by Buyer. This order is a complete and exclusive statement of the terms and conditions of the agreement between Seller and Buyer.
2. **PACKING AND SHIPPING.** All goods shall be packed, rated and braced to prevent damage or deterioration in accordance with Uniform Freight Classification Rules and Regulations and Carrier Tariffs. No charges will be paid by Buyer of preparation, packing, crating or cartage unless separately stated in the order. Goods sold F.O.B. point specified on purchase order. Shipping costs for goods on back order shall be paid only at the rate which would have been applicable had the complete order been shipped at one time. All excess costs shall be borne by Seller.
3. **CANCELLATION.** Time is of the essence in this order. Buyer reserves the right to cancel this order, or any portion of this order, without liability, if; (1) delivery is not made when and as specified; (b) Seller fails to meet contract commitments as to exact time, price, quality or quantity; (c) Seller ceases to conduct its operation in the normal course of business; (d) Seller is unable to meet its obligations as they mature; (e) proceedings are instituted against Seller under the bankruptcy laws or any other laws relating to the relief of creditors; (f) a receiver is appointed or applied for by Seller; or (g) any assignment is made by Seller for the benefit of creditors.
4. **INSPECTION AND REJECTION.** All goods, are subject to final inspection and acceptance by Buyer at destination. Such inspection will be made within a reasonable time after receipt of goods. Buyer shall notify Seller if any goods delivered hereunder are rejected, and at Buyer's election and Seller's risk and expense, such goods shall be held by Buyer or returned to Seller. No replacement or correction of nonconforming goods shall be made by Seller unless agreed to in writing by Buyer.
5. **CHANGES AND DISCREPANCIES.** Any discrepancies, omissions or lack of clarity in drawings, specifications, or purchase orders, must be referred to the Buyer for written interpretation before this order is processed. Buyer shall have the right at any time before completion of the order, to make changes in quantities, in drawings and specifications, in delivery schedules, and in methods of shipment and packaging. If such changes cause an increase or decrease in price or in the time required for performance, Seller shall promptly notify Buyer thereof in writing and equitable adjustment shall be made. Changes shall not be binding upon Buyer unless evidenced by a purchase order change notice and issued and signed by Buyer.
6. **INVOICE AND PAYMENT.** A separate invoice shall be issued for each shipment. Unless otherwise specified on this order, no invoice shall be issued prior to shipment of the goods and no payment shall be made prior to receipt of both the goods and a correct invoice. Applicable discount periods shall be computed from the date of receipt of the goods and a correct invoice to the date Buyer's check is mailed. Unless freight and other charges are itemized, discount shall be taken on the full amount of invoice.
7. **ETHICAL SOURCING.** Seller must comply with the requirements, standards and guidelines and policies set forth in Kalani Supplier Social Responsibility Standards, as such standards may be

amended, changed or modified by Kalani from time to time. A copy of Kalani's Supplier Social Responsibility Standards is located at <http://kalanipkg.com/suppliers>

8. WARRANTIES. Seller warrants that:
  - a. Representations and Warranties

Seller represents, warrants, and covenants to Kalani that all Products and Services: (i) are free from defects; (ii) are merchantable and fit for their intended purpose; (iii) conform to the Specifications and other requirements of the Agreement; (iv) are free and clear of all liens, claims or encumbrances; (v) comply with all applicable laws, ordinances, regulations, rules or governmental orders; and (vi) do not infringe or violate the Intellectual Property rights of any third parties. Seller further warrants that all Services hereunder shall be performed by personnel with the experience, training, skill and other qualifications needed to perform the Services, and will be provided in a timely, professional and workmanlike manner, in accordance with the highest industry standards. Seller further represents and warrants that: (i) Seller has complied with and will at all times be in compliance with applicable laws, ordinances, regulations, rules or governmental orders; (ii) Seller has all necessary licenses, permits, rights, powers, and authority to enter into the Agreement and perform its obligations pursuant to the Agreement; and (iii) the execution and performance of the Agreement will not result in the breach by Seller of any agreement, covenant, court order, judgment or decree to which Seller is a party or by which it is bound. Unless otherwise provided in an Order, all warranties contained in the Agreement are in addition to all other warranties, express, implied or statutory, applicable to Seller or the Products or Services.

1. Compliance with Laws. In the performance of this order, Seller will comply with all applicable Federal, State, and local laws and ordinances and all lawful orders, rules and regulations thereunder, including the Fair Labor Standards Act, 1938, as amended (29 U.S.C. Sec 201 - 219), Occupational Health and Safety Act (Pub L 91 - 596), and all lawful rules and regulations thereunder.
2. INDEMNITY AND INSURANCE A. Patent Indemnity. Seller, at its expense, shall protect, defend and indemnify Buyer, Buyer's customers, and the users of Buyer's goods against all claims and proceedings alleging infringement of any United States or foreign patent by any goods delivered under this order, and Seller shall hold them harmless from any resulting liabilities and losses, provided Seller is reasonably notified of such claims and proceedings. Seller's obligation shall not apply to goods manufactured pursuant to detailed designs furnished by Buyer nor to any infringement arising from the use or sale of goods in combination with goods not delivered by Seller if such infringement would not have occurred from the use or sale of such goods solely for the purpose for which they were designed or sold to Buyer. Seller's obligation shall extend to the U.S. government only if and to the extent Buyer has agreed to indemnify the U.S. Government.
3. General Indemnity. Seller shall indemnify, defend, and hold harmless Kalani and their directors, officers, managers, employees, representatives, agents, successors and assigns from against any and all third party actions, demands, allegations, claims, liability, investigations, suits, loss or expense, including, without limitation, reasonable attorneys' fees and cost of litigation ("Claims"), arising out of or related to: (i) the actual or alleged infringement, violation, or misappropriation of a third party's Intellectual Property rights by Seller or the Products or Services (excluding claims of infringement arising from Kalani Intellectual Property); (ii) Seller's breach of the Agreement; (iii) any claims of personal injury, death, or property damage caused by the Products or arising out of the Seller's performance (or non-performance) of the Services; (iv) Seller's negligence or willful misconduct; or (v) any disputes between Seller and any supplier, vendor, or service provider of Seller. In addition, Seller shall indemnify, defend, and hold harmless Kalani and Authorized Buyers against any and all Claims arising out of or related to Recalls of the Product resulting from Seller's breach of the Agreement, Seller's violation of laws, or Seller's negligence or willful misconduct. The obligation to pay attorneys' fees in this indemnity provision includes all attorneys' fees incurred in defending any claim or establishing the right to indemnity under this Agreement. All indemnification obligations survive the termination of this Agreement or any Order.

4. Insurance. Seller shall maintain Commercial General Liability insurance with a minimum of \$1,000,000 per occurrence and a general aggregate limit of not less than \$2,000,000. Seller will provide Kalani with evidence of such insurance in the form of an insurance certificate upon request. Seller will provide Kalani with written notice of the scheduled expiration or termination of its Commercial General Liability policy no later than thirty (30) days' prior to the effective date of any expiration or termination.
5. REQUIREMENTS FOR FEDERAL SUBCONTRACTORS. Seller shall comply with all Federal requirements applicable to Federal subcontractors, including without limitation those requirements relating to equal employment opportunity, minority business subcontracting, small business subcontracting, labor surplus area subcontracting and clean air and water, and at the request of Buyer, Seller shall execute and shall be bound by any certifications or agreements incorporating such requirements in forms approved by Buyer.
6. ASSIGNMENTS. No assignment of any rights, including rights to money due or to become due hereunder, or delegation of any duties under this order shall be binding upon Buyer until its written consent has been obtained.
7. CLEARANCE OF MATERIALS INTENDED FOR PUBLIC RELEASE. No news release, including photographs and film, advertisements, public announcement, denial or confirmation of same or any part of the subject matter of this order or any phase of any program thereunder shall be made without prior written approval of Buyer.
8. INTELLECTUAL PROPERTY AND MARKS. Seller acknowledges that all rights of ownership of the Marks, Kalani confidential information, and Kalani Intellectual Property belongs exclusively to and inures to the benefit of Kalani. Seller will not at any time acquire any rights, title or interest in the Marks, Kalani confidential information, or Kalani Intellectual Property. Seller agrees that it will not at any time contest the ownership or validity of any of the Marks, Kalani confidential information, or Kalani Intellectual Property, nor register or attempt to register any of the foregoing nor assist anyone else to do so, nor do anything that would jeopardize or diminish the Marks, Kalani confidential information, or Kalani Intellectual Property. Seller may not refer to Kalani or Kalani customers, the Agreement or the existence of a business relationship between Seller and Kalani and Kalani customers for any marketing or promotional purposes, without the prior written consent of an Authorized Representative of Kalani. Seller may not use Kalani or customer name or the Marks in any manner, promotional or otherwise, without the prior written consent of an Authorized Representative of Kalani.
9. APPLICABLE LAW. The Agreement and any all disputes between Seller and Kalani are governed by and must be construed in accordance with the laws of the state of Washington, without reference to conflicts of law principles. The parties agree to the exclusive jurisdiction and venue of the state and federal courts located in King County, Washington for any legal proceeding involving the Agreement or any dispute between Seller and Kalani. In the event of any dispute regarding the interpretation or enforcement of the Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and cost of litigation.

In addition to any remedy identified in the Agreement, if Seller breaches any term of the Agreement, Kalani will have the right to: (i) terminate the Agreement and/or any Order; (ii) demand the immediate return of all confidential information; (iii) recover its damages incurred by reason of such breach, including, without limitation, incidental and consequential damages, and its attorneys' fees and costs of litigation; (iv) obtain injunctive relief to prevent such breach or to otherwise enforce the terms of the Agreement; and (v) pursue any other remedy available at law or in equity. Failure to properly demand compliance or performance of any term of the Agreement will not constitute a waiver of Kalani rights or remedies. All rights and remedies of either party hereto are cumulative of each other, and the exercise of one or more rights or remedies will not prejudice or impair the concurrent or subsequent exercise of other rights or remedies

Kalani shall have the right to amend, revise, and update these Standard Terms and Condition of Purchase at any time. A copy of the then current Standard Terms and Condition of Purchase shall be accessible at <http://kalanipkg/suppliers>.