**TERMS AND CONDITIONS**

**OF KLEIN PLATING WORKS, INC.**

All purchase orders are expressly MADE conditional on assent to these Terms and Conditions. Customer assent TO THESE TERMS AND CONDITIONS SHALL BE conclusively presumed by placing an order, absent objection made in writing prior to OR CONTEMPORANEOUSLY WITH placing said order.

The following Terms and Conditions apply to all purchase orders placed with Klein Plating Works, Inc. (“KPW”) for any plating or related services requested by any customer (“Customer”):

1. Acceptance. These Terms and Conditions are considered an offer by KPW to perform work for the Customer according to these Terms and Conditions. Customer placing a purchase order with KPW constitutes acceptance of these Terms and Conditions and request for KPW to complete the order according to Customer specifications and subject to these Terms and Conditions. KPW’s performance is deemed assent to complete the purchase order only according to these Terms and Conditions. This provision can only be modified by a writing signed by both KPW and Customer.
2. General. “Customer” means the person or entity executing a purchase order for plating services supplied by KPW. These Terms and Conditions are in lieu of and replace any and all terms and conditions set forth in any documents issued by Customer. Any additional, different, or conflicting terms and conditions on any such documents issued by Customer at any time are hereby rejected by KPW and shall not be binding in any way on KPW regarding any past, current, or future provision of services, except as otherwise expressly agreed to by KPW in a separate writing executed contemporaneous with such order for services. All purchase orders are expressly conditional on assent to these Terms and Conditions, which Customer assent is conclusively presumed by placing an order, absent objection made in writing prior to or contemporaneously with placing said order.
3. Quotes. Quotations are valid for six (6) months from issuance. After six (6) months, prices and terms are subject to change without notice.
4. Payment. Within thirty (30) days from completion of work for Customer, Customer must pay KPW for services rendered. Any balance remaining unpaid after said 30 days shall be subject to a late charge of 1-1/2% per month, being an annual percentage rate of 18%, or the maximum amount permitted by law, whichever is greater, plus attorney’s fees and costs of collection, if applicable, and all other fees and costs, including attorney’s fees incurred by KPW in enforcing the covenants and agreement of these Terms and Conditions, whether by institution of litigation or in taking the advice of counsel otherwise.
5. Materials. KPW assumes no responsibility for defective plating or other finishes or related services on materials which upon delivery to KPW have on them oil, rust, debris or scale, or on materials previously plated by or finished by others. Such defective materials shall be returned to Customer for cleaning, stripping or refinishing, or, at KPW’s option, be stripped and refinished by KPW at Customer’s expense. Materials must be received by KPW free from excessive oil, rust, debris, or scale. If parts do not arrive clean and free from excessive oil, rust, debris, or scale, KPW is entitled to charge Customer a separate cleaning fee to prepare parts for plating.
6. Ownership. Customer hereby warrants that it is either the owner of the materials or merchandise delivered to or accepted by KPW for plating or that Customer is authorized by the owner of the materials or merchandise to accept these terms and conditions on such owner’s behalf.
7. Disclaimer of Liability. KPW is not, under any circumstances, an insurer of Customer’s materials or merchandise. KPW expressly disclaims liability for any loss or damage to materials or merchandise while in transit to or from KPW’s facility, whether in trucks or vehicles owned by KPW, the Customer, or any third person acting on KPW’s behalf or on the Customer’s behalf. Furthermore, KPW expressly disclaims liability for any loss or damage to said materials or merchandise while in KPW’s possession for any cause whatsoever, including, but not limited to, theft, fire, casualty, or act of God.
8. Quality of Work. Customer acknowledges that, even after employing industry standard techniques and methods, there are variables which impact metal plating and finishing. To this end, Customer accepts that any procedures, chemicals, or processes applied to materials and merchandise are applied at the sole risk of Customer and that KPW shall not be responsible or liable for any damage to these items occurring during the finishing process, except for damage caused by negligence on the part of KPW. KPW makes no claims or warranties regarding the end result or quality of any plating services. KPW, at its sole discretion, may offer to re-plate materials if KPW accepts that the result achieved should be regarded as below the standard that KPW deems acceptable.
9. Warranty. KPW warrants that processing, plating, finishing, and other related services shall meet Customer’s specifications or methods provided in writing with the order. KPW does not warrant that plating will be free from all defects. When Customer specifies methods to be followed, KPW shall comply with the specified methods, regardless of whether or not the desired result is indicated. KPW assumes no responsibility for the correctness of such methods and procedures, or the result when such methods and procedures are followed. KPW does not warrant that any materials provided by Customer are suitable or fit for processing, plating, finishing, and other related services. WITH REGARD TO PLATED OR FINISHED MATERIALS, MERCHANDISE OR PARTS, KPW DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
   1. No claim for shortage in weight or count, or defect in quality, whether latent or patent, will be allowed unless such claim is presented in writing to KPW within three (3) business days after receipt of merchandise by Customer or the Customer’s consignee to whom it is delivered. Customer hereby expressly assumes the risk of discovering such shortage or defect within such time. KPW shall re-plate any such defective merchandise without charge, so long as such merchandise is returned to KPW in the same condition as originally shipped to Customer by KPW, and such Customer has provided timely and effective notice as provided hereinbefore in this paragraph.
   2. The warranty contained herein is expressly in lieu of all other warranties, express or implied. KPW’s liability for any loss or damage is limited to the lesser of the Customer’s cost of the material or merchandise or KPW’s price for plating such material or merchandise. KPW expressly disclaims any other damages of any nature whatsoever, including, without limitation direct, indirect, special, and consequential damages.
10. Customer Claims. No claim shall be allowed for shrinkage, expansion, deformity, rupture, or other alteration of material in plating, except by special separate written agreement.

1. Force Majeure. KPW shall not be liable for any loss or damages of any kind whatsoever related to this agreement or performance thereof arising out of or related to any delay due to an event that is beyond KPW’s reasonable control, including, without limitation, a strike or boycott (whether occurring at KPW, Customer’s business, or the business of any supplier, either of Customer or KPW, or elsewhere), riot, act of God, fire (regardless of cause), casualty, sabotage, shortage of labor or material or equipment (unless the shortage is caused by KPW’s negligence), inclement weather, war, the act of a third party hired by Customer, governmental approval, law, regulation, or restriction.
2. Delivery. Deliveries made by KPW within ten (10) days of the time specified shall be deemed in full compliance with the terms of KPW’s agreement with Customer. It is agreed that KPW shall have the right to make partial or installment deliveries, for which the Customer shall pay at the contract price. Defective delivery or non-delivery with respect to any installment or partial delivery under this agreement shall be a severable breach and shall not give the Customer the right to treat the entire contract as breached.

1. Cancellation. Any cancellation of an order by Customer shall be valid and effective only if accompanied by payment of an amount equal to twice the cost of actual labor and materials devoted by KPW in performance of the order, if any, plus ten percent of the total contract price. Such amount shall be as reasonable liquidated damages for the cost to KPW expended for the order and not as a penalty.
2. Security. All of Customer’s materials and merchandise in possession of KPW shall be subject to a general lien for all monies owing by the Customer to KPW, whether or not due and payable, and whether or not such monies are owing to KPW for work, labor or services rendered, or materials or equipment used in connection with such merchandise.
3. Special Requirements. Special tools, racks, or fixtures required for the performance of the work to complete Customer’s order which have been or may be designed and/or built by KPW shall be and remain property of KPW, regardless of whether or not the Customer is charged with time and/or material in connection therewith. A tooling charge does not denote or confer ownership of any tooling or other equipment or facility used in connection with fulfilling the order by KPW. Any design and subsequent development work is proprietary in nature. Such services are rendered by KPW for the benefit of Customer, and any resulting tooling, appliances, equipment, racks, or other fixtures used in performing services under the agreement are the sole property of KPW.
4. Thickness. For purposes of measuring any plated merchandise for compliance with relevant specifications, be it Customer’s specification, or in absence of a Customer specification, the industry standard specification, thickness readings will be taken 0.05-0.10” from any outer edge, unless Customer otherwise requires a specific location and the same is is agreed upon in writing by KPW in advance of plating.
5. Particular Processes. KPW utilizes a number of plating processes, including without limitation Barrel Plating, Rack Plating, and Vibratory Plating. Barrell Plating and Rack Plating processes allow KPW to offer a lower price quote, but may result in minor imperfections from the plating process. Vibratory Plating requires that parts be pre-treated and dried separately which may cause part bending. Customer agrees to accept merchandise with minor imperfections or damage resulting from the plating process, consistent with industry standards, and that KPW has no responsibility to repair and does not guarantee that merchandise shall be free from minor imperfection or damage resulting from the plating process. Such damage may include, but is not limited to, thread rolling, bending or nicking to parts resulting from normal Barrel Plating operations, rack marks from normal Rack Plating operations, bending to parts resulting from normal Vibratory Plating operations. For Rack Plating, KPW will decide rack location unless otherwise specified by Customer and agreed upon by KPW in writing in advance of plating.
6. Subcontracting. KPW shall have the right to subcontract all or any part of the work required by the Customer’s order.
7. Shipping. Shipping dates contained in any order documents are approximate and KPW shall not be liable for any delay in shipment for any reason.
8. Risk of Loss. Merchandise or materials to be shipped by KPW shall be F.O.B. KPW’s facility or other location of shipping. Customer shall bear all costs of shipping merchandise or materials to and from KPW’s facility unless otherwise agreed upon in writing by KPW in advance of shipping.
9. Customer’s Containers. During storage and transportation of Customer’s material or merchandise, Customer’s containers used for delivery to KPW may be used for reshipments, and in such case, with parts packaged as received. Any damages resulting from the use of such containers shall be at the Customer’s risk. Additional charges may be incurred by the Customer for repackaging goods to other specifications.
10. Taxes. All taxes or other government charges regarding any order are the responsibility of the Customer, but may be collected or withheld by KPW at its discretion.
11. Additional Charges. Additional charges may apply if 24-hour or rush services or special inspections or certifications are requested. KPW reserves the right to apply metal surcharges to its invoices when Customer prices have not been adjusted for significant increases in the market price of metals. Minimum charges apply to all orders unless otherwise contracted. Metal factors are in addition to minimum charges. Where goods are delivered in multiple deliveries, KPW may deem each delivery to be a separate order or contract and minimum charges will apply to each delivery.
12. Waiver. Failure of KPW to insist on performance of any of these Terms and Conditions or requirements related hereto, or to the underlying purchase order, shall not be construed as a waiver of such Terms and Conditions or requirements, and shall not affect the right of KPW to thereafter enforce every provision of these Terms and Conditions, the purchase order, or other requirements.
13. Notices. Notices to be served hereunder shall be in writing and delivered by hand or sent by U.S. Mail, e-mail or fax to either party at its last known address. Notices sent by U.S. Mail shall be deemed served when sent. Notices sent by hand, by e-mail or by fax shall be deemed served when received.
14. Law, Jurisdiction, and Venue. The provisions of the Uniform Commercial Code, as adopted in the Commonwealth of Pennsylvania, shall govern, except as provided in these Terms and Conditions to the contrary. These Terms and Conditions and any purchase order or agreement between KPW and Customer shall be interpreted according to the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws provisions. KPW and Customer irrevocably consent to exclusive jurisdiction and venue in the state and federal courts located in Erie County, Pennsylvania. If any provision of this instrument shall be declared invalid by a court of competent jurisdiction, such invalidation shall not affect the remaining valid provisions hereof.
15. Headings. The headings contained in these Terms and Conditions are for convenience only and in no way define, limit, or extend the scope or intent of any provision of these Terms and Conditions.
16. Entire Agreement. The provisions hereof along with the Customer’s purchase order constitute the entire agreement between KPW and Customer in regard to the subject matter herein. Any changes, alterations, waivers, or modifications with respect either as to the job performed, the terms of sale, or any other matter set forth herein, must be in writing and signed by a duly authorized representative of KPW. These terms and conditions shall apply to any existing or future purchase order or agreement for the plating of materials or merchandise. KPW’s acceptance of Customer’s purchase order is expressly made conditional on Customer’s assent to these Terms and Conditions.