

Hoffmann + Krippner, Inc. - Terms and Conditions of Sale

I. General

These Terms and Conditions ("Terms and Conditions") form an integral part of any acceptance by Hoffmann + Krippner Inc. ("Hoffmann + Krippner") of any purchase order ("Order") placed and sales transaction resulting therefrom and shall supersede all printed terms and conditions on any request for proposal, purchase order, or other form, if any, of or presented by a customer of Hoffmann + Krippner ("Customer") and any other inconsistent terms submitted by a Customer prior to acceptance by Hoffmann + Krippner of an Order. These Terms and Conditions may not be varied or supplemented unless agreed to in writing by a duly authorized representative of Hoffmann + Krippner. No sales representative shall have such authority. Failure of Hoffmann + Krippner to object to conflicting or different provisions contained in any Order or other writing of Customer shall not be construed as a waiver of these Terms and Conditions nor an acceptance of any terms and conditions of Customer. Except only as otherwise agreed in writing by a duly authorized representative of Hoffmann + Krippner, the sale of any of Hoffmann + Krippner's products ("Products") shall be governed only by these Terms and Conditions. Customer shall be deemed to have accepted these Terms and Conditions if Customer accepts any shipment of Products to which these Terms and Conditions relate. Hoffmann + Krippner hereby expressly rejects any portion of any Order that attempts to modify these Terms and Conditions.

II. Offer and Acceptance

The Order is an offer to purchase upon these Terms and Conditions and will be considered accepted upon Hoffmann + Krippner's receipt of an Order from Customer for the Products and Hoffmann + Krippner's acceptance of the Order ("Order Acceptance"). Such an Order is an "Accepted Order". Customer acknowledges that Hoffmann + Krippner reserves the right to reject any Order for any reason or for no reason.

III. Prices

Hoffmann + Krippner's sale of Products shall be made subject to these Terms and Conditions at the prices listed in Hoffmann + Krippner's online shop ("Online Shop") or written proposals and pricelists provided to customer. Prices are subject to change without notice.

IV. Payment

An Accepted Order shall be processed either upon prepayment in full of the purchase price, freight charges and any other related charges reasonably estimated by Hoffmann + Krippner, or according to payment terms agreed upon in writing.

V. Late Charges; Non-Payment

All payments provided hereunder shall be due upon placement of an Order or according to payment terms agreed upon in writing and

shall not be contingent upon any payment to Customer from any third party. Interest will accrue at the rate of one point five percent (1.5%) per month, or, if such rate is greater than the maximum rate permitted by applicable law, then at the highest rate allowed by applicable law, compounded monthly on overdue balance. Customer shall pay all costs of collection, including legal fees. Hoffmann + Krippner reserves the right to seek any additional remedies allowed by law. Discounts and any unauthorized deductions or adjustments are not allowed. Delinquent account Accepted Orders will not be processed until account balance is current.

VI. Taxes

Customer shall pay, in addition to any invoiced amount, all taxes, if applicable, upon the production, sale, shipment, or use of the Products, including, without limitation, all federal, state, or local property, license, privilege, sales, use, excise or gross receipts taxes or other like taxes and tariffs. In the event that Hoffmann + Krippner is required to pay any such taxes, Customer shall indemnify, pay or reimburse Hoffmann + Krippner on demand for such payments and any penalties or fees related thereto.

VII. Shipment; Risk of Loss; Shipping Schedule

1.Shipments shall be made F.O.B. Woodstock, Georgia, unless otherwise specified in writing.

2.Hoffmann + Krippner's Products are packaged carefully, using standard approved methods. The shipment shall be deemed accepted in good and undamaged condition by the common carrier ("Carrier") and title to, and the risk of loss or theft, damage or destruction to, the Products shall pass and shift to Customer upon releasing the Products to the Carrier and upon that acceptance by the Carrier.

3.Hoffmann + Krippner will use its commercially reasonable efforts to ship the Products as agreed upon by Hoffmann + Krippner and Customer. However, Customer acknowledges and agrees that lead time will vary according to availability of supply, delays in transportation, manufacturing problems and other conditions, and, consequently all delivery dates communicated by Hoffmann + Krippner are estimates and shall be subject to change without notice. Delay in delivery of any shipment of Products shall not relieve Customer of its obligations to accept such shipment or any other shipment. Under no circumstances shall Hoffmann + Krippner on account of late delivery or non-delivery be liable to Customer, its agents or any other persons for any special or consequential damages, whether based upon lost goodwill, lost profits, work stoppage, impairment of or breach of contract, negligence or such other actions as may be deemed or alleged to be the cause of a loss or damage to such a person.

4.Hoffmann + Krippner shall invoice all freight, handling and insurance charges to Customer.

5.Hoffmann + Krippner's shipments are NOT insured. Customer must request insurance coverage, if required, and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of Customer. Hoffmann + Krippner assumes no responsibility for any such loss or damage.

6.All shipments shall be made by a Carrier of Hoffmann + Krippner's choice and under consideration of Customer's preferred Carrier. Any special arrangements requested by Customer shall be at Customer's additional expense.

7.Hoffmann + Krippner reserves the right to deliver in installments. Delay in delivery of any installment shall not relieve Customer of its obligation to accept remaining deliveries.

8.If Customer defaults in accepting delivery of Products, Hoffmann + Krippner shall be entitled to charge storage and restocking fees, unless prohibited by applicable law. Such charges shall be a ten percent (10%) restocking fee of the value of that delivery or any such portion of it which was not accepted as agreed upon. Outgoing and ingoing freight expenses shall be borne by Customer for any such delivery. Upon Customer's default under this Section, Hoffmann + Krippner shall be entitled to otherwise sell any such Products.

VIII. Inspection; Claims; Return

1.Customer shall inspect the Products immediately upon their delivery and shall give written notice in accordance with Section 21 below to Hoffmann + Krippner (i) of any damage to the Products within eight (8) business days from the date of their delivery and (ii) of any claim that the Products do not conform to their description in the Online Shop within one (1) month from the date of their delivery ("Damage or Loss"). If Customer does not provide such notice, the Products shall be deemed to conform to their description and the Products shall be deemed accepted by Customer in accordance with the terms of the Accepted Order. Customer expressly waives any rights Customer may have to reject or revoke acceptance of the Products after such notification period has lapsed.

2.For any Damage or Loss not immediately apparent, Customer shall notify Hoffmann + Krippner within eight (8) business days of discovery of such Damage or Loss. If Damage or Loss is ascertainable by Customer upon delivery, Customer must immediately file a claim with the shipper and notify Hoffmann + Krippner in writing as set forth above within two (2) business days after delivery. Notations regarding any such claim shall be made

on all copies of shipper's waybill and the driver must sign all copies to acknowledge notification of the claim. Upon Hoffmann + Krippner's request, Customer shall furnish to Hoffmann + Krippner all original delivery records so as to assist Hoffmann + Krippner in assessing the validity of the claim.

3. Customer shall not refuse acceptance of shipment because of transit damage as this causes unnecessary shipping expense and delay.

4. Time is of the essence for purposes of this Section 8.

5. In the event that Customer is not satisfied with any purchased Product, Customer may return such Product in undamaged condition in its original packaging within fourteen (14) calendar days of the date of purchase. Any such return shall be accompanied by the original purchase receipt.

6. If Customer returns any Product in accordance with Section 8.5 in unopened condition, Hoffmann + Krippner will, at Customer's election, exchange the returned Product for another Product or issue a full refund of the purchase price. If the Product is not in unopened condition and Hoffmann + Krippner must perform rework prior to the resale of the Product, Hoffmann + Krippner shall be entitled to charge restocking fees, unless prohibited by applicable law. Such charges shall be a ten percent (10%) restocking fee of the value of that delivery or any such portion which was returned. Outgoing and ingoing freight expenses shall be borne by Customer for any such return.

7. Refunds in accordance with Section 8.6 shall be made based on the original payment method. For purchases in excess of Two Hundred Fifty Dollars (\$250) made by cash, cash equivalent or check, Hoffmann + Krippner will issue a refund check, to be mailed within fourteen (14) business days. For purchases made by credit card payment, Hoffmann + Krippner will issue a refund to the original credit card within three (3) billings cycles.

IX. Cancellation

After Order Acceptance, Customer may not cancel any Accepted Order without Hoffmann + Krippner's written consent.

X. Force Majeure

Hoffmann + Krippner shall not be liable for damages as a result of any delay or failure of delivery due to any cause beyond Hoffmann + Krippner's control, including, without limitation, acts of nature or God, act of Customer or any of its representatives, any statute, ordinance, regulation, order or other governmental agency or judicial action, fire, storm, flood, earthquake, explosion, accident, war or rebellion, sabotage,

epidemic, quarantine restrictions, strike, riot, terrorism, war, transportation embargoes, failure or delay in transportation or inability to obtain or delay in obtaining necessary labor, products, fuel or manufacturing locations or failures of manufacturing machinery. In the event of any such delay, the date of delivery shall be extended for a period equal to the time loss by reason of such delay and, if such delay is caused by act of Customer or any of its representatives, Hoffmann + Krippner shall be reimbursed for any additional costs arising from such delay.

XI. Limited Warranty

1. Hoffmann + Krippner provides for a limited warranty for any of the Products furnished hereunder for any defect in workmanship or materials under normal use for the following periods from the date of purchase: (i) for Keywi Online Shop Products for a period of six (6) months with regard to the enclosure and electronics and for a period of ten (10) years with regard to the antimicrobial effect and functionality of the keys and (ii) for Potentiometer Online Shop Products for the earlier of (y) a period of two (2) years or (z) the reaching of the maximum number of guaranteed operations as set forth in the product specifications for any respective membrane potentiometer. Customer must notify Hoffmann + Krippner in writing with respect to any warranty claim and furnish proof of purchase, upon which notification Hoffmann + Krippner shall determine the validity of such claim. Any limited warranty repairs or substitutions of Products shall not extend the original limited warranty period. Any defect covered under this limited warranty shall be remedied by repair or replacement delivery at Hoffmann + Krippner's sole discretion and expense. Hoffmann + Krippner retains the right to at least two (2) attempts for repair prior to replacement delivery to remedy any limited warranty claim. Replaced Products shall become the property of Hoffmann + Krippner. This limited warranty shall not apply to Products which, upon Hoffmann + Krippner reasonable determination, have been subjected to operating and/or environmental conditions in excess of the maximum values as set forth in the applicable specifications or otherwise have been subjected to misuse, neglect, improper installation, repair, alterations, or other damaging conditions.

2. EXCEPT AS SET FORTH IN SECTION 11.1 ABOVE, HOFFMANN + KRIPPNER MAKES NO EXPRESS OR IMPLIED WARRANTY, STATUTORY OR OTHERWISE, CONCERNING ANY PRODUCT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF MERCHANTABILITY.

XII. Damages Disclaimer and Limitation

IN NO EVENT SHALL HOFFMANN + KRIPPNER

BE LIABLE TO ANY CUSTOMER OR ANY OTHER PERSON FOR ANY (A) INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL OR (B) DIRECT DAMAGES TO BODY, HEALTH OR PROPERTY FOR ANY MATTER ARISING OUT OF OR RELATING TO THE PRODUCTS, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF HOFFMANN + KRIPPNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL HOFFMANN + KRIPPNER'S TOTAL AGGREGATE LIABILITY FOR DAMAGES EXCEED THE GREATER OF THE AMOUNT OF (A) TOTAL COMPENSATION PAID CUSTOMER TO HOFFMANN + KRIPPNER FOR THE PRODUCTS, OR (B) PROCEEDS AVAILABLE FROM ANY INSURANCE POLICY IN EFFECT AND APPLICABLE TO THE EVENT GIVING RISE TO SUCH LIABILITY.

XIII. Intellectual Property

1. Customer acknowledges Hoffmann + Krippner's exclusive right, title and interest in Hoffmann + Krippner's patents, trademarks, service marks, trade names, emblem, designs and methods relating to Products (the "Intellectual Property"). Customer acknowledges that Hoffmann + Krippner has certain ideas and information concerning financial matters and trade secrets and corporate proprietary information, written and unwritten (the "Information and Ideas") which Hoffmann + Krippner is willing to disclose to Customer from time to time as it becomes necessary to promote a transaction between Hoffmann + Krippner and Customer governed hereunder ("Transaction"). Customer shall not acquire any right, title or interest in the Intellectual Property or the Information and Ideas by virtue of any Transaction under these Terms and Conditions, or at any time describe or represent itself to others as having such right, title or interest. Should any law or regulation vest Customer with any rights and any of the Intellectual Property or the Information and Ideas, Customer hereby assigns and agrees to assign to Hoffmann + Krippner all such rights contemporaneously with their vesting. Customer shall promptly notify Hoffmann + Krippner of any and all infringements of the Intellectual Property or the Information and Ideas of which it becomes aware and will assist Hoffmann + Krippner in taking action against any such infringements.

2. Customer acknowledges and agrees that irreparable harm would be suffered by Hoffmann + Krippner in the event of a breach of this Section 13 and that Hoffmann + Krippner shall have the right to seek injunctive relief in the event of a breach or threatened breach of this Section. Customer agrees that the rights of Hoffmann + Krippner provided in the sentence above and under the terms of these Terms and Conditions shall be in addition to, and not in lieu of, all other rights Hoffmann

+ Krippner may have at law or in equity to protect the Intellectual Property and the Information and Ideas.

XIV. Indemnification

Customer hereby agrees to indemnify, defend, at Customer's expense, and hold Hoffmann + Krippner harmless from and against all loss, costs, damages or expenses arising out of any Customer's breach of any term of an Accepted Order including, but not limited to, these Terms and Conditions or any provision thereof and any alleged infringements of patents, trademarks, copyrights or any other intellectual property right relating to the use of Products.

XV. Default

Hoffmann + Krippner reserves the right to cancel all or any part of a current Accepted Order and any other Accepted Orders outstanding, without liability to Customer, if Customer fails to perform under any applicable provision of these Terms and Conditions or of any applicable Accepted Order and the failure is not cured within ten (10) days after notice to Customer by Hoffmann + Krippner. In the event of termination, Hoffmann + Krippner may exercise all rights and remedies available to it hereunder and under the laws of the state of Georgia.

XVI. Bankruptcy or Insolvency

If Customer files any petition under any bankruptcy reorganization, composition or insolvency law, or if any other person or entity files such petition with regard to Customer, or if a receiver has been appointed to manage Customer's affairs or property, Hoffmann + Krippner, in its sole discretion, may terminate any Accepted Order by written notice to Customer. Hoffmann + Krippner's termination shall not prejudice its rights to the amounts then due under this Proposal or to any other remedies available. In the event an action is brought by Hoffmann + Krippner to collect the monies due hereunder, Customer shall pay all cost of collection, including reasonable attorney's fees, and interest allowed by law.

XVII. Arbitration

In the event that the parties are unable to agree on any matter for which agreement is required under an Accepted Order, including these Terms and Conditions, or if either party commits a default hereunder, whether material or immaterial, either party shall have the right to submit the matter to binding arbitration in accordance with the rules of the American Arbitration Association ("AAA"), as then in effect. Each party shall pay one-half of the deposit required by AAA. If the matter in dispute exceeds twenty-five thousand Dollars (\$25,000), the matter shall be considered by a panel of three arbitrators. Each party shall appoint one arbitrator within fifteen (15) days of receipt of notice of the other party requesting arbitration and the arbitrators so selected shall then select a third arbitrator. Upon failure of a party(ies)

to appoint an arbitrator (or of the arbitrators selected to appoint a third arbitrator) as contemplated in the foregoing sentence, AAA shall appoint an arbitrator. If the matter in dispute is twenty-five thousand Dollars (\$25,000) or less, the matter shall be considered by a single arbitrator. The parties shall mutually agree to the single arbitrator, or if the parties are unable to so agree on an arbitrator within thirty (30) days following a request for arbitration by either party, the arbitrator shall be selected by AAA. The decision of the arbitrator(s) (by majority vote if there are three arbitrators) shall be binding upon all parties. If there are three arbitrators, each party shall bear the cost of its arbitrator and cost of the third arbitrator shall be borne by the non-prevailing party. If there is a single arbitrator, the non-prevailing party shall bear the cost of the arbitrator. Each party shall bear all of its own witness fees and attorneys' fees. The arbitration proceeding shall occur in Atlanta, Georgia.

XVIII. Jurisdiction; Venue

For purposes of injunctive relief or should arbitration not be available, in any legal action relating to the sale and shipment of Products under these Terms and Conditions, Customer irrevocably agrees and consents (i) to the exercise of jurisdiction over it by the courts of the State of Georgia or the United States District Court for the Northern District of Georgia; and (ii) that if Customer brings the action, it shall be instituted in one of the courts specified in Subsection (i) above. Service of process provided to Customer in accordance with Section 21 below shall be effective and sufficient to establish jurisdiction and venue in such court in any such action. Should arbitration not be available, Hoffmann + Krippner may institute legal action in any appropriate jurisdiction.

XIX. Governing Law

The Accepted Order, including these Terms and Conditions and any Transaction shall be governed by and construed in accordance with the laws of the State of Georgia, United States of America.

XX. Severability

If any provision of an Accepted Order, including these Terms and Conditions shall be judged by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such adjudication shall not affect or modify any other provision of the Accepted Order, including these Terms and Conditions and the effect thereof shall be confined to the provision as to which such adjudication is made.

XXI. Notice

Any notice or other communication required or permitted by these Terms and Conditions to Hoffmann + Krippner must be given in writing and must be delivered by personal delivery (including personal delivery by overnight courier such as Federal Express, DHL, or similar

overnight courier), first class mail (registered or certified), telecopy or e-mail (with a copy sent by personal delivery or first class mail), in each case addressed to Hoffmann + Krippner Inc., 2770 Main Street, Suite 201, Frisco, TX 75033; Telefax: +1-800-838-1201. Notice will be deemed given when received or delivered.

XXII. Assignment

Customer shall not delegate any duties or assign any rights under any Accepted Order without the prior written consent of Hoffmann + Krippner. Any such attempted delegation or assignment shall be void.

XXIII. Third Party Rights

Nothing in any Proposal, Order Acceptance or Accepted Order is intended to confer any rights or remedies on any persons other than Customer, Hoffmann + Krippner, and their respective successors and permitted assigns.

XXIV. Headings

The headings contained in these Terms and Conditions are included for mere convenience of reference and shall not affect the language included herein.

XXV. Amendment

Hoffmann + Krippner reserves the right to amend these Terms and Conditions from time to time.

Hoffmann + Krippner, Inc.
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