



## TERMS & CONDITIONS

The undersigned, on behalf of the customer, agrees to the following terms and conditions (hereinafter "Conditions"):

1. **Contract Defined.** If the sale of products by Seller to Buyer is not otherwise covered by an applicable written agreement between Seller and Buyer which expressly supersedes these Conditions, then, upon acceptance by Seller of the quantity of Product specified on Buyer's purchase order, such quantity, together with these Conditions and all other provisions of any applicable document(s) of Seller on which these Conditions are printed, will constitute "the Contract" between Seller and Buyer.

2. **Product Quality / Quantity.** Seller will not be required to deliver a quantity of Product exceeding that specified in the Contract. If no monthly quantity is specified, Seller may limit the quantity to be supplied in any month to the lesser of the pro rata amount of the specified quantity or, after the initial ninety days of the Contract, the average of the monthly quantities shipped during the expired months of the Contract. Seller warrants that at the last point before risk of loss transfers to Buyer, Product shall conform to the specifications provided by Seller or, if not provided, as published by Seller. SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND CONCERNING PRODUCT, WHETHER OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, AND NONE SHALL BE IMPLIED.

3. **Shipments.** Shipments of each Product will be made only at the origin point specified by Seller for such Products. Incoterms will either be EX-Works (EXW) if the buyer's carrier is used for shipment or Free Carrier (FCA) if the seller's carrier is used for shipment. Title and liability for merchandise will transfer at the point of origin (if bulk that point is when the material passes from the loading line to the connecting line of the loading vessel and if packaged when the product is in the truck). The quantity of all bulk rail and truck shipments will be determined by Seller by outage tables with corrections for temperature or by weigh master's certificate as appropriate. The quantity of all packaged shipments will be determined by the Seller BOL (Bill of Lading) and Seller's quantity determination will govern both. Buyer will promptly unload each shipment at its own risk and expense, including demurrage or detention charges.

4. **Tax.** Any tax (other than income), duty or other governmental charge now or hereafter imposed on Product or any raw material used in manufacturing Product (or on Seller, or required to be collected or paid by Seller, by reason of the manufacture, transportation, sale or use of such Product or raw material) will be paid by Buyer in addition to the sale price.

5. **Price, Payments, Credit.** For each Product, the price, origin point and terms of payment will be specified for that Product in the Contract or otherwise quoted by Seller, and such price is subject to change at any time by Seller giving notice to Buyer. If no terms of payment are specified or quoted, then funds are due in Seller's bank or financial institution within thirty days from the date of Seller's invoice. At Seller's request, Buyer shall submit financial performance data of Buyer. Additionally, Buyer agrees to dialogue with Seller in sufficient detail as is necessary for Seller to form a clear judgment on the financial health of Buyer. If Buyer fails to comply with this provision or in the event the Buyer's credit worthiness or ability to pay is or may be impaired, in the reasonable opinion of the Seller, Buyer shall, upon Seller's request, provide security for payment in the form satisfactory to the Seller, at the Buyer's expense. If Buyer fails to pay any indebtedness to Seller in accordance with terms for the indebtedness, Seller may, in addition to other remedies, postpone or withhold the supply of Product.

6. **Rush Orders, Cancellations, and Fees.** All orders scheduled to ship within 48 hours are considered firm ("FIRM ZONE") and changes are not permitted. Any customer request for a next day shipment will incur a fee ("RUSH ORDER FEE") for the fulfilled order of \$250 plus any applicable carrier costs. Orders canceled within the FIRM ZONE will incur a fee ("RESTOCKING FEE") of \$250. Custom blend orders cancelled at any time will incur a 20% RESTOCKING FEE.

7. **Force Majeure Event.** A party will not be liable for its failure to perform any term of this Contract, except financial, to the extent that performance is delayed or prevented by any circumstance reasonably beyond the affected party's control, including without limitation: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) plant malfunction; (d), strikes, labor stoppages or slowdowns, or other industrial disturbances; (e) plant shutdown (planned or unplanned); (f) war, invasion, hostilities (whether war is declared or not), terrorist threats or act, riot, or other civil unrest; (g) national or regional emergency; (h) unavailability of or interference with the usual means transporting the Product; (i) shortage of adequate power or telecommunications or transportation facilities; (j) epidemic or pandemic; (k) compliance with any law, regulation, order, recommendation, direction or request of any governmental authority; or (l) any other event which is beyond the reasonable control of such affected Party (each of the foregoing, a "Force Majeure Event"). In addition, Seller will be so excused in the event it is unable to acquire from its usual sources and on terms it deems to be reasonable, any material necessary for manufacturing the Product. If, because of such circumstances, there should be a shortage of any Product from any of Seller's sources, Seller will not be obligated to purchase Product in order to perform the Contract and may apportion its available Product among all its customers and its own internal uses in such manner as it, in its sole judgment, finds appropriate. Quantities of Products consequently not shipped will be deducted from the applicable remaining quantity obligation. The affected party claiming the occurrence of a Force Majeure Event shall be obligated to undertake commercially reasonable measures to overcome or mitigate such Force Majeure Event. The affected party shall not be entitled to claim any delay caused by a Force Majeure Event unless the affected party, within fifteen (15) days after the affected party becomes aware of the existence of its inability to perform the particular term(s) of this contract due to a Force Majeure Event, notifies the other party of the following in writing: (i) occurrence of the Force Majeure Event, (ii) the obligation to be performed hereunder that may be affected as a consequence of the occurrence thereof, and (iii) the actions proposed to be undertaken by such affected party to mitigate or overcome such Force Majeure Event and carryout such term(s) of the contract to the extent possible and commercially practicable.

8. **HSSE Communications.** Buyer will disseminate appropriate health, safety, security, and environment information to all persons (including but not limited to Buyer's employees, contractors and customers) as required by law or which Buyer foresees may be exposed to Product.

9. **Liabilities-Claims-Indemnification.** Buyer will indemnify, defend and hold harmless the Seller its affiliates, directors, officers, and employees against any liability (whether strict, absolute or otherwise) for any claim, loss, damage, cost and expense, including but not limited to reasonable legal fees or attorneys' fees and other costs of dispute resolution, on account of any injury, disease or death of persons (including Buyer's employees) or damage to property (including Buyer's) or the environment arising out of the transport or in connection with Buyer's unloading, storage, handling, purchase, sale, disposal or use of the Product; and/or any failure by Buyer to disseminate safety and health information as provided in Article 7. Seller's liability for defective or non-conforming Product, whether or not based on Seller's negligence, will not exceed the purchase price of the Product involved in the claim. NO PARTY WILL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, LOST PROFITS OR PUNITIVE DAMAGES OF THE OTHER, PROVIDED THIS EXCLUSION OF LIABILITY SHALL NOT APPLY TO INDEMNIFICATION CLAIMS BY SELLER TO RECOVER FROM BUYER ANY SUCH DAMAGES PAID TO A THIRD PARTY. The provisions of this Article 8 will survive termination of the Contract.

10. **Remedies.** If Buyer fails to pay any indebtedness to Seller in accordance with the terms for such indebtedness (whether or not under this Contract), Seller may, in addition to any other remedies, suspend shipments, change terms of payment or terminate this Contract by notice to Buyer.

Buyer's obligation to perform will not be limited by any previous waiver by Seller. In the event that Buyer breaches any term or condition of this Contract, Buyer will reimburse Seller for all costs and expenses related to Seller's pursuit of payment for any claim in any way arising from such breach, including but not limited to reasonable attorney's fees. If Buyer fails to pay any indebtedness to Seller in accordance with the terms for such indebtedness (whether or not under this Contract), Seller may, in addition to any other remedies, suspend shipments, change terms of payment or terminate this Contract by notice to Buyer.

11. **Governing Law.** This contract will be interpreted and the rights, obligations and liabilities of the parties determined in accordance with the laws of the State of Ohio, without regard to its conflict of laws principles. Buyer agrees that any action arising out of or related to the agreement shall be venued only in Hamilton County, Ohio and/or the United States District Court for The Southern District of Ohio in Cincinnati, Ohio.

12. **Assignability.** Neither this Contract (include all rights, duties and obligations hereunder) nor any claim against Seller arising directly or indirectly out of or in connection with this Contract will be assignable by Buyer or by operation of law, without the prior written consent of the other Party. However, notwithstanding the above, Seller shall, have the right to assign this Contract to a controlled subsidiary of Seller or to a purchaser or other successor to a significant portion of Seller's assets involved in the manufacture of Product without the consent of Buyer.

13. **Export and Non-Diversion.** Notwithstanding anything to the contrary contained herein, if the product is to be exported from the United States of America, the Buyer shall, for purposes of this Contract, be the "U.S. Principal Party in Interest" as that term is used by U.S. customs and/or the Bureau of Industry and Security ("BIS") and shall comply with all regulations (including, but not limited to, those related to reporting, filing and record keeping) of U.S. customs and/or BIS.

Further, Buyer undertakes that the Product deliverable under the Contract shall not, either directly or indirectly, be: (a) exported to or imported into any Restricted Jurisdiction; (b) sold or supplied to any person in any Restricted Jurisdiction; or (c) sold or supplied to any person for the purposes of any commercial activity carried out in or from any Restricted Jurisdiction. Buyer shall, if requested by Seller, provide Seller with documentation satisfactory to Seller verifying the final destination of such Product.

Notwithstanding any other provision in this Contract, if Buyer becomes a Restricted Party at any time prior to actual physical delivery of the Product at the final destination, upon notice Seller may, (i) determine alternate directions for disposition of any Product in transit, to the extent allowed under applicable laws and regulations, and (ii) terminate the Contract with immediate effect. The cost of any such disposition of Product as directed by Seller will be borne solely by Seller. Buyer shall fully cooperate with Seller's directions for disposition of any Product in transit and Buyer's sole remedy for damages of any type it may have suffered due to Seller's failure to deliver shall be a refund of any money paid by Buyer to Seller for the Product that was not delivered to the extent such refund is allowed under applicable laws and regulations.

For purposes of this clause: "Restricted Jurisdiction" means any country, state, or region (i) against which there are sanctions imposed by the United Nations and/or to which supplies of the Product are prohibited or restricted under the laws of the country in which the Product was produced or supplied (unless such country has granted a license or equivalent permit to the export of the Product) except insofar as the delivery of such licensed or permitted Product is inconsistent with any other applicable law or regulation, or (ii) that is a destination prohibited by the terms on which Seller acquired the Product.

"Restricted Party" means a party (i) targeted by national, regional, or multilateral trade or economic sanctions under the applicable laws, including, but not limited to, persons designated on the United Nations Financial Sanctions Lists or U.S. Department of Commerce Denied Persons List, in force from time to time or (ii) directly or indirectly owned or controlled by or acting on behalf of such persons and includes directors, officers or employees (including agency personnel).

Buyer shall comply with: (a) all applicable laws relating to Product use, dual-use, diversion, trade, export, and re-export of Product (including any regulations prohibiting drugs and weapons manufacture); and (b) where applicable, Seller's requirements as set out in this Contract for the application of Product, and Buyer further undertakes to take all necessary steps to secure similar undertakings from Buyer's customers. Buyer assumes all risk and responsibility for non-compliance with all United States Export laws and requirements. **Buyer represents that it does not use or sell (directly or indirectly) any of the Products in theatrical fogs or other artificial smoke generator applications, in or to the tobacco industry or for use in electronic cigarettes, in the manufacture or preparation of foods or pharmaceuticals where glycol is not further reacted to produce a derivative product, as a component of a weapon or weapons system.**

Without prejudice to the foregoing, when requested, Buyer will supply Seller with evidence satisfactory to Seller that controls are in place at its customer-base, which actively supports such compliance.

14. **Acceptance, Entirely and Release.** Seller's acceptance of Buyer's order proposal is expressly conditional on Buyer's assent to the terms of the Contract and Seller rejects any terms of Buyer's order or proposal, which differ from or are in addition to them. Buyer's assent to the terms of the Contract will be conclusively presumed by Buyer's acceptance of Product at the point of origin specified above (Article 3). This Contract contains the complete and exclusive agreement of Seller and Buyer concerning the Product, merges and supersedes all prior understandings and representations (oral or written) between the Parties concerning the Product and, except for any indebtedness or indemnity obligation of Buyer to Seller, each releases the other from all claims arising in connection with any such prior contract.

Signature

Print Name

Date

**Please return completed form to Accounts Receivable:  
f: (513) 492-5555 or e: accountsreceivable@kostusa.com**

*This page must be signed to start the review process.*

