

KITCO Fiber Optics, Inc. – Terms and Conditions of Sale

Quotes: Lead-time estimates in this quote is based on inventory and production capacity at the time of quote generation. Availability of material and production capacity is subject to prior sale limitations and must be confirmed in writing at the time of order placement. Quotes are generated based on documentation available at the time. Any deviations from customer specifications will be identified either prior to, or at the time the quote is submitted. Customer deviations to requirements after quote generation must be explicitly indicated before a Sales Order based on this quote is placed.

Acceptance/Governing Terms: These Terms and Conditions of Sale (“Agreement shall apply to all sales of products and services by KITCO Fiber Optics, Inc. (KITCO) a Virginia corporation. As used in these Terms and Conditions of Sale, “we” and “our” shall refer to KITCO and “you” and “your” refer to CUSTOMER or the person purchasing goods and services from KITCO.

Unless otherwise specifically agreed in writing by the President and Chief Executive Officer of KITCO, any different or additional terms and conditions proposed by CUSTOMER in a purchase order, response to a quotation, or other proposal are hereby rejected by KITCO and shall not be incorporated into the Agreement. Your assent to these Terms and Conditions of Sale shall be conclusively presumed from your ordering products or services quoted by KITCO, your failure to object in writing to these Terms and Conditions of Sales within ten business days of shipment by KITCO and/or your acceptance of all or part of any products or services ordered. If KITCO is found to have acknowledged your order or proposal, and such acknowledgement constitutes an acceptance of an offer, such acceptance is expressly made conditional on your assent to these Terms and Conditions of Sale which shall have control over any conflicting or inconsistent terms and conditions and form part of the acknowledgment and acceptance by CUSTOMER of any KITCO products or services and shall be deemed to constitute such assent. If any quotation or other document provided to you by KITCO is deemed to constitute an offer to you, your acceptance of such offer is limited to these Terms and Conditions of Sale.

Rights: The rights of the CUSTOMER and KITCO are governed by and construed in accordance with the laws of the COMMONWEALTH OF VIRGINIA OF THE UNITED STATES OF AMERICA.

Terms of Payment: Terms of payment for KITCO products and services shall be as follows: KITCO accepts Visa, MasterCard or American Express as payment for purchases, and CUSTOMER agrees to provide KITCO with card number, expiration date, security code, billing address, cardholders name and phone number. Open account status is available to CUSTOMERS that wish to provide KITCO credit information, meet KITCO’s requirements and wait for account approval. KITCO reserves the right to refuse credit. Purchases on open account are due in full by due date shown on the face of the invoice, KITCO reserves the

right to charge, and you agree to pay a service charge of 1.5% per month, compounded monthly, on any balance which you have not timely paid, and which is past due from the agreed upon terms. Should it be necessary for KITCO to institute collection procedures to collect any past due amounts from you, KITCO shall be entitled to recover its costs and expenses, including, without limitation, attorney's fees and other associated legal costs. Notwithstanding the acceptance of an order from CUSTOMER by KITCO, KITCO reserves the right to ship material to you in the event you have not paid in accordance with agreed terms, or, in the sole opinion of KITCO, you are unable to meet your payment obligation to KITCO when due.

Taxes: Prices do not include applicable sales taxes, excise taxes or similar taxes. Taxes will become the responsibility of CUSTOMER when applicable. CUSTOMER may provide KITCO with tax exempt certificates, prior to sale, to satisfy tax authorities.

Freight/Claims Terms: All products are sold F.O.B. KITCO, 1151 Azalea Garden Road, Norfolk, VA 23502. Freight will be prepaid and added to our invoice unless specified otherwise by buyer. Drop shipments are available at no charge if the ship to address is provided at the time of original order. Delivery of products to a carrier by KITCO shall constitute delivery to CUSTOMER and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall be borne by CUSTOMER. Method and route of shipment shall be at the discretion of KITCO unless CUSTOMER specifies otherwise; any additional expense for the method or route of shipment specified by CUSTOMER shall be borne entirely by CUSTOMER. Claims for shortages or other errors in delivery must be made in writing to KITCO within ten (10) days after receipt of shipment. Claims for loss or damage to goods in transit should be made to the carrier and not to KITCO.

Insurance: Insurance charges will be prepaid and added only at the specific request of CUSTOMER.

Returns: No goods or materials may be returned by CUSTOMER, or any unperformed services cancelled without prior written authorization in the form of a Returned Material Authorization (RMA) which has been issued by KITCO expressly for the goods or materials to be returned or the services to be cancelled. The RMA will be issued at the sole discretion of KITCO and must be requested by CUSTOMER in writing within thirty (30) days of original shipment date for goods and materials or thirty (30) days prior to the scheduled time for performance of services. Except with respect to defective items, returned goods and materials must be in original sealed containers and in their original resalable condition. CUSTOMER may not return any special products, custom-made products, or outdated or modified versions of cataloged factory stocked items unless such products are determined by KITCO to be defective. The minimum value for which an RMA will be issued is \$50. All returns or cancellations will be subject to a minimum 25% handling and restocking/cancellation charge, and an adjustment will be made for the freight expense of the original shipment if allowed by the carrier. Merchandise accepted for return must be shipped prepaid to

KITCO's facility or as instructed by KITCO. RMAs issued by KITCO Fiber Optics are subject to cancellation if authorized material return is not received within ninety (90) calendar days from issue date of the RMA

Order Cancellation Terms; Excusable Delays: Verbal order cancellations will not be accepted. Neither party shall be liable for any damages resulting from any delay or failure to deliver due to any act of God, act of the CUSTOMER, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown or other labor difficulties, war, riot, delay in transportation, defaults of common carriers, inability to obtain necessary labor, materials or manufacturing facilities or without limiting the foregoing, any other delays beyond KITCO's control. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay.

Warranty: KITCO products are warranted to be free from defects in design, material and workmanship under normal use and service, for a period of one year from the date of purchase. KITCO's liability under this warranty is limited to replacing or repairing (at KITCO's discretion) any products that are returned, provided that

1. KITCO is notified in writing by the purchaser upon discovery of any defects
2. The defective product is returned to KITCO
3. Upon examination of the return, KITCO is satisfied that the defect was not caused by misuse, neglect, accident or alteration, improper installation, or normal wear and tear

This WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

In no event shall KITCO be liable to the end-user for collateral or consequential damages of any kind. KITCO shall not otherwise be liable for loss, damage or expense directly or indirectly arising from the use of the product. The sole and exclusive remedy against KITCO shall be repair or replacement of the product.

Assignment: These terms and conditions may not be assigned by CUSTOMER without KITCO's prior written consent.

Waivers: KITCO's election not to enforce any provision hereof or of any order hereunder shall not be construed to be a continuing waiver and we reserve the right to subsequently enforce such provision unless we agree otherwise in writing.