

Terms and Conditions

- 1 The word "KSB" and Keystone Building Systems in this document means Keystone Steel Buildings, LLC.
- 2 This Purchase Order, upon acceptance by KSB, forms a contract between KSB and Purchaser which contract covers only items specifically set forth in this Purchase Order and approved Change Orders. KSB's acceptance shall be indicated by its signing of the Purchase Order. All orders placed by Purchaser shall be submitted on standard KSB order forms and shall be governed by KSB specifications and the standard Terms and Conditions in effect from time to time. KSB's standard specifications and Terms and Conditions are incorporated by reference.
- 3 KSB materials are F.O.B. plant at current published prices less applicable discounts at the time of the order acceptance, plus applicable taxes. All materials furnished are governed by KSB specifications and standard terms and conditions only, and any variance or deviation must be so stated on the Purchase Order, and/or approved Change Orders. KSB reserves the right to refuse any variance or deviation from KSB specifications. In the event of conflict between drawings and this document, only material listed herein will be furnished. All other material furnished will be at an extra charge. The building designed by KSB is designed for the intended purpose as stated in the design information included on this Purchase Order and/or Change Orders agreed to in writing by the parties and approved by KSB.
- 4 Purchaser agrees to pay a minimum charge of \$300.00 for each change made to this Purchase Order.
- 5 Any Change Order is necessarily subject to, and contingent upon, KSB's acceptance of the underlying Purchase Order. In the event KSB does not accept the Purchase Order, any Change Order(s) shall not form a contractual relationship between KSB and Purchaser.
- 6 The Metal Building Manufacturers Association "COMMON INDUSTRY PRACTICES" sections and the "DESIGN PRACTICES" section, current edition is incorporated by reference as though fully set forth herein. By execution of this, Purchaser acknowledges the applicability of this publication to this Purchase Order.
- 7 Except as otherwise expressly provided herein, all excise, privilege, occupation, sales, use, personal property, and other taxes applicable to the sale, purchase, construction, use or ownership of any of KSB's products and/or work provided herein, and for which KSB shall be liable to collect or pay, shall be added to the amount to be paid by Purchaser to KSB hereunder and shall be paid by Purchaser. All such taxes for which KSB will invoice Purchaser will, to the extent reasonably possible, be disclosed to Purchaser and included within the Purchase Order.
- 8 If, in the opinion of the Purchaser, any material is damaged prior to receipt by Purchaser to a degree that will prevent use of such material with minor field repair, delivery of damaged material shall be refused by Purchaser, noted by item as "damaged" on shipping documents and returned on delivering truck to KSB or to common carrier. Under no circumstances shall damaged material that cannot be used with minor field repair be unloaded at jobsite. KSB shall not be liable for the correction of errors in design, detailing, manufacturing or shipping if Purchaser does not strictly comply with the provisions of MBMA "COMMON INDUSTRY PRACTICES" governing the correction of errors and repairs, and material count. It is specifically agreed that claims for errors, shortages, imperfections and defects will not be entertained by KSB unless made in writing to the customer service department of KSB within three days after receipt of goods. In the event the imperfections or defects are such that Purchaser is not aware of them and could not, through the exercise of reasonable care and attention, have become aware of them, then Purchaser shall notify KSB in writing within a reasonable time from the point in time when Purchaser became aware of, said defects whichever occurs first. In no event shall Purchaser's lack of actual or constructive knowledge of the defects serve to enlarge the applicable limitations period. KSB shall not in any event be liable for labor charges or consequential damages arising from the use of defective materials. It is further agreed that no back charges or offsets of any kind will be accepted by KSB unless agreed to in writing.
- 9 KSB makes no warranties except as may be set forth in KSB's standard warranties, if any, that are in effect as of the date of this Purchase Order and are made a part of this Purchase Order as though fully incorporated herein. All other warranties, including warranties of merchantability and fitness for purpose, express or implied, by operation of law or otherwise, are excluded from this Purchase Order and are otherwise disclaimed. KSB's liability is limited as set forth on its standard warranties, if any, and KSB shall not be liable for any other damages, whether direct or consequential, including loss of use, which may be suffered by Purchaser. KSB shall comply with specifications governing material, workmanship, design procedure and design loads which are expressly provided herein. Materials or workmanship sold hereunder for which specifications are not expressly provided herein shall be subject to KSB's standard variances, tolerances and specifications current as of the date of this Purchase Order. Purchaser assumes responsibility that the KSB product it has purchased herein is erected in a first rate workmanlike manner and in accordance with KSB's Erection & Detail Manual, whether the erection is performed by Purchaser or its subcontractor.
- 10 KSB shall not be liable for any direct, consequential, or liquidated damages, including loss of use, which Purchaser may suffer by reason of KSB's delays in performance of this agreement. Causes of such delays include, but are not limited to, strikes, fires, floods, storms, riots, differences with workmen, loss or damage of materials, inability to obtain workmen or materials, excessive backlog, or other circumstances beyond KSB's reasonable control. Should any work agreed to be performed by KSB be interrupted or delayed by Purchaser in excess of sixty (60) days on account of factors beyond KSB's control, then upon notice from KSB of such interruption or delay, Purchaser will pay KSB the total of KSB's costs of materials and work performed, plus current overhead costs and 10% of the herein agreed consideration.
- 11 KSB, in its sole discretion, may find it advisable to recommend changes or modifications to Purchaser's Purchase Order prior to KSB's acceptance thereof. In the event KSB performs preliminary design or engineering work on behalf of Purchaser, Purchaser agrees that KSB shall be paid as per its then-current rates for such work, in accordance with the Terms and Conditions. However, Purchaser agrees that KSB shall not become obligated to manufacture the structure unless and until KSB accepts the Purchase Order. KSB shall not become obligated to manufacture the structure merely by reason of it having performed preliminary design and/or engineering work prior to acceptance of the Purchase Order, and Purchaser may not compel KSB to manufacture the structure if KSB has not accepted the Purchase Order.
- 12 Delivery time on materials not normally carried in the stock of KSB shall be predicated upon the availability to KSB of this particular type of material. In the event customer delays approval of drawings by more than sixty (60) days after receiving same or requests a delay in fabrication beyond thirty (30) days after approval of drawings, KSB may invoice customer for any services performed, and the price quoted herein shall be subject to revision at KSB's option. In the event customer delays delivery of building and/or parts after fabrication is complete and ready to ship, KSB will immediately invoice Purchaser for the total F.O.B. amount which shall be due and payable upon receipt of invoice. KSB also reserves the right to charge the Purchaser for storage at prevailing rates. In the event any action or inaction by Purchaser results in a delay to KSB, beyond the time referenced in the Clarification Letter, in the processing, fabrication or shipping of Purchaser's order, KSB reserves the right to charge to Purchaser, and Purchaser agrees to pay, any increased costs incurred by KSB as a result of the delay. In the event a Clarification Letter is issued by KSB, the Clarification Letter shall be incorporated as part of the Purchase Order, and its terms shall be binding upon Purchaser.
- 13 KSB agrees to carry Workmen's Compensation Insurance and Comprehensive General Liability Insurance, including Property Damage, and Automobile Liability, covering work performed by KSB. Certificates of such insurance coverage will be forwarded upon request. Purchaser will carry all other forms of insurance, unless otherwise agreed to in writing. The Purchaser agrees that Purchaser or Owner will procure Builders Risk Insurance, without cost to KSB, covering KSB's material, equipment, and labor for all standard risk perils of loss including collapse, and such policy shall contain a waiver of subrogation toward KSB shall receive a share of any payments of loss under such policy as its interest may appear and any deductible therein shall be to the Purchaser's account.

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- 14 KSB agrees to hold harmless Purchaser from any and all claims, suits, damages, losses and expense arising out of or in connection with any alleged or real injury to any person or property, to the extent caused by KSB's negligence.
- Purchaser agrees to defend and hold harmless KSB from any and all claims, suits, damages, losses and expense arising out of or in connection with any alleged or real injury to any person or property, to the extent caused by Purchaser's negligence.
- 15 Purchaser acknowledges that KSB has not performed any assessment regarding the suitability of the product ordered as it relates to Purchaser's needs, and has not relied on any statements, promises or assurances from KSB in regard to suitability of the product ordered. Purchaser assumes full responsibility for selecting a product that will satisfy its needs, and KSB shall not be responsible in the event the product selected by Purchaser fails to meet Purchaser's needs.
- 16 Reasonable doubt on the part of KSB of Purchaser's financial responsibility shall entitle KSB to stop operations, decline shipment, withhold delivery of any material in transit, or to exercise any other rights or remedies granted to KSB under applicable law without any liability whatsoever unto KSB, until Purchaser shall have paid for all material referred to in this Purchase Order, or otherwise satisfied KSB of its financial responsibility. Purchaser agrees to pay KSB's standard terms, as set forth herein. It is further agreed that Purchaser will pay all costs of collecting or securing, or attempting to collect or secure any indebtedness which may be due hereunder including reasonable attorney's fees, court costs, witness fees and other reasonable litigation expenses incurred by KSB, whether the same be collected or secured by suit or otherwise.
- 17 Should Purchaser fail to make payment upon the terms designated by KSB, interest at the rate of 1½% per month (18% annual percentage rate) will be charged from maturity and for each 30-day period the invoice goes beyond the term of payment. If state law of Purchaser prohibits this rate, the interest charged in the annual percentage rate will be the maximum allowed by state law. Payment for all materials delivered shall become due immediately upon delivery in accordance with KSB's standard terms. KSB reserves the right to demand payment in advance of shipment, or at another time in its sole discretion.
- 18 It is the Purchaser's responsibility to communicate accurately to KSB the appropriate design loads, safety and occupancy requirements, and any other controlling factors that are appropriate for the geographic location of the building. The Purchaser represents and warrants that the specifications of any building as set forth in the purchase order meet the requirements of the federal, state and local controlling building codes. It is expressly agreed the Purchaser shall be responsible for obtaining all permits whether federal, state, or local. The Purchaser also agrees it is responsible for engineering design and construction of suitable and unmovable foundation upon which to erect a steel building. Because site and soil conditions vary greatly, KSB makes no representation or recommendation concerning the type of foundation and recommends Purchaser consult its own engineer (KSB is not the foundation engineer of record).
- 19 Purchaser agrees to indemnify, hold-harmless, and assume complete defense of KSB, its agents or employees against any actions, claims, damages, liabilities, costs, and expenses whatsoever in matters arising out of (i) Purchaser's failure to comply with the provisions of this Purchase Order (ii) incorrect information, data or specifications being placed upon any KSB estimates, quotes, purchase orders and Change Orders submitted by Purchaser or (iii) Purchaser's failure to erect any KSB product in a first rate workmanlike manner or (iv) Purchaser's failure to erect any KSB product in accordance with KSB Erection & Detail Manual. KSB guarantees only that the buildings will meet specific loadings outlined in the Purchase Order, or any Change Order approved in writing by both parties. KSB reserves the right to change design or make structural substitutions that do not materially affect the strength of the buildings covered under this Purchase Order and/or Change Orders approved in writing by both parties.
- 20 This Purchase Order is an offer by Purchaser which may be accepted by KSB. Upon acceptance by KSB, this Purchase Order will become a Contract and final expression of agreement between purchaser and KSB relating to the materials and/or work herein proposed to be sold. All prior understandings, negotiations, arrangements or expectations are superseded by this Purchase Order unless expressly incorporated herein. After acceptance of this Purchase Order by KSB, it cannot be cancelled without KSB's written agreement. In the event of a cancellation by Purchaser, Purchaser shall pay to KSB all costs and expenses incurred by KSB in preparation for construction under this Purchase Order prior to the date of cancellation.
- 21 This Purchase Order may only be modified, amended or changed if the modification, amendment or change is in writing and is agreed to and signed by KSB and by Purchaser. In the event of modification, amendment or change, all other provisions of this Purchase Order shall remain in full force and effect unless expressly indicated otherwise therein.
- 22 This Purchase Order is not assignable by Purchaser.
- 23 This Purchase Order shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, and shall be binding upon and inure to the benefit of the parties hereto.
- 24 Any civil action or proceeding between the parties arising out of this Purchase Order, including any dispute regarding the duties or performance called for hereunder, shall be brought in either the Court of Common Pleas of Allegheny County, Pennsylvania, or the United States District Court for the Western District of Pennsylvania, and Purchaser consents to, and waives any and all objections and/or defenses, to venue or jurisdiction in either the Court of Common Pleas of Allegheny County or the United States District Court for the Western District of Pennsylvania.
- 25 In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable in any respect, such unenforceability shall not affect any of the remaining provisions of this Purchase Order, but this Purchase Order shall be construed as if such unenforceable provisions have never been contained therein.
- 26 This Purchase Order is intended by the parties as a final expression of their agreement, and it is intended also as a complete and exclusive statement of the terms of their agreement. It is specifically understood and agreed that KSB shall have no liability whatsoever under any contract between Purchaser and other parties unless KSB accepts such liability in writing.
- 27 It shall be the responsibility of the Purchaser to carefully check order acknowledgments immediately upon receipt and to notify KSB of any discrepancy.
- 28 Nothing herein shall be deemed or construed to constitute or create a partnership, joint venture or agency between KSB and Purchaser. Purchaser shall have no authority to act as an agent or employee of KSB, nor shall Purchaser have any authority to bind KSB in any way.

Acceptance

I agree to the terms and conditions explained above.

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