

TERMS AND CONDITIONS OF SALE

GENERAL. These Terms and Conditions of Sale (these “Terms”) are applicable to the sale of those products (the “Products”) and Services (“Services”) described in one or more written or oral Sales Quotes (each, a “Sales Quote”) issued by Kotlyn, Inc. (the “Company”) to the purchaser (“Purchaser”) of the Products and Services, and/or one or more written or oral purchase orders or similar forms issued by Purchaser to the Company in respect of such Products or Services (each, a “Purchase Order”). These Terms, the Sales Quote, and any Daily Reports of Time and Material executed by the parties (“Daily Reports”) constitute a complete and exclusive statement of the agreement between the Company and the Purchaser with respect to the Products and Services. In the event of a conflict between the terms and conditions contained in any Purchase Order or final order acknowledgement and those contained in these Terms, the terms and conditions contained in these Terms will govern. In the event of a conflict between the express terms and conditions contained in any Sales Quote and those contained in these Terms, the terms and conditions contained in the Sales Quote will govern. Purchaser’s acceptance of the Products constitutes its’ acceptance of these Terms and the other terms set forth in the Sales Quote. All Sales Quotes, Daily Reports and Purchase Orders are subject to the warranties, warranty disclaimer, terms and conditions appearing herein, and Purchaser agrees to be bound thereby. No modifications or additions thereto will be binding upon the Company unless expressly consented to by the Company in writing. Any conflicting warranties, terms and conditions in any Purchase Order or any document other than the Sales Quote are specifically rejected by the Company. Purchaser’s acceptance of these Terms and the Sales Quote is limited to acceptance of the express terms contained herein and therein. Any proposal by Purchaser for additional or different terms or any attempt by Purchaser to vary, in any degree, any of the terms herein or in any Sales Quote will not operate as a rejection of such terms. Purchaser’s proposal for additional terms will be deemed to be a proposal to materially alter the contract between the parties, and Purchaser will be deemed to have accepted such Sales Quote and these Terms without said additional or different terms, unless Purchaser’s acceptance of the Sales Quote and these Terms is expressly made conditional on the Company’s assent to such additional terms.

REMOVAL OF THE PRODUCTS; TITLE. The Company will arrange for shipment of the Products. Shipping terms for all Products is FOB shipping point, and title to the Products will pass to Purchaser at that point. Purchaser will in all events be responsible for and will bear the risk with respect to any loss or damage to the Products during transportation from the shipping point for the Products. Purchaser must pay all freight, handling, delivery, special packing and insurance charges for shipments of the Products. Choice of carrier and shipping method and route will be at the election of the Company. The Company will have the right to deliver all Products covered hereby at one time or in partial shipments from time to time, within the agreed time for delivery. All delivery dates are approximate, and the Company will not be liable for damages or costs that arise in connection with the delivery of goods after the date stated on any Sales Quote, Purchase Order or any other document. Delivery dates are further dependent upon the prompt receipt by the Company of all information required by the Company to proceed with work immediately and without interruption. In no event will the Company be liable for any fees, loss or damage caused by or in connection with any delay in delivery of the Products.

DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY. THE COMPANY WARRANTS THAT THE SERVICES WILL BE FREE FROM MATERIAL DEFECTS IN WORKMANSHIP. THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS, NOR DOES IT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THAT THE PRODUCTS ARE FIT FOR A PARTICULAR PURPOSE. THE PRODUCTS ARE SOLD TO PURCHASER “AS IS” “WHERE IS” AND “WITH ALL FAULTS” EXCEPT TO THE EXTENT OF ANY MANUFACTURER’S WARRANTY ATTACHING TO NEW PRODUCTS SOLD TO PURCHASER.

THE COMPANY WILL NOT BE LIABLE TO PURCHASER FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OR LOSS UNDER ANY CIRCUMSTANCES, REGARDLESS OF CAUSE AND REGARDLESS OF THE THEORY OF LIABILITY ASSERTED BY PURCHASER, WHETHER CONTRACT, TORT OR OTHERWISE. PURCHASER ACKNOWLEDGES THAT IT HAS DECIDED TO PURCHASE THE PRODUCTS BASED UPON ITS OWN ASSESSMENT OF THE PRODUCTS. PURCHASER ACKNOWLEDGES AND AGREES

THAT THE COMPANY HAS NOT MADE ANY STATEMENTS OF FACT CONCERNING THE PRODUCTS, AND PURCHASER HAS NOT RELIED UPON ANY STATEMENT BY THE COMPANY IN DECIDING TO PURCHASE THE PRODUCTS.

IN NO EVENT WILL THE COMPANY’S LIABILITY ARISING IN CONNECTION WITH THE PRODUCTS OR SERVICES OR UNDER THESE TERMS OR ANY SALES QUOTE OR PURCHASE ORDER (REGARDLESS OF CAUSE AND REGARDLESS OF THE THEORY OF LIABILITY ASSERTED BY PURCHASER, WHETHER CONTRACT, TORT OR OTHERWISE) EXCEED THE PURCHASE PRICE FOR THE PRODUCTS AND SERVICES.

PAYMENT TERMS. Purchaser agrees to pay the Purchase Price in accordance with the terms set forth in the Sales Quote. Unless otherwise provided in the Sales Quote, all invoices are due and payable net 30 days from the date of invoice. All payments must be made in U.S. dollars, and all balances that remain unpaid more than 30 days after the date of invoice will be subject to a finance charge of 1.5% per month until paid in full. Purchaser must pay the Company’s costs of collection (including reasonable attorneys’ fees) with respect to any delinquent balance. Purchaser is responsible for any sales or use tax imposed on the sale of Products hereunder. The Company may without liability, and without notice to Purchaser, delay shipment of any Products not yet shipped while any balance owed to the Company hereunder remains unpaid.

INDEMNIFICATION. Purchaser will defend, indemnify and hold the Company and its shareholders, directors, officers and agents harmless from and against any and all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys’ fees) arising from or related to (i) the Products from and after the date of shipment, including to the extent arising from or related to the condition of the Products or any defect in the Products, or Purchaser’s action or inaction as related to the Products, or (ii) Purchaser’s breach of any of its representations or covenants contained herein.

ASSIGNMENT. No assignment of these Terms or any Sales Quote or any amount due or to become due hereunder or thereunder will be binding upon the Company without its prior written consent. The Company may assign these Terms and any Sales Quote. These Terms and all Sales Quotes will be binding upon the parties hereto and their respective successors and permitted assigns.

PURCHASE MONEY SECURITY INTEREST. As security for the Purchaser’s performance of its obligations hereunder, including payment of the Purchase Price in full, the Company hereby reserves, and Purchaser hereby grants to the Company, a purchase money security interest in all of the Purchaser’s right, title and interest in and to the Products, and in the proceeds thereof. Purchaser hereby authorizes the Company to file one or more financing statements under the Uniform Commercial Code with respect to such security interest with the proper filing and recording agencies in any jurisdiction the Company deems proper. The Company will have all of the rights and remedies of a secured party under the Uniform Commercial Code in such jurisdictions, which remedies will be cumulative and not exclusive.

DISPUTE RESOLUTION. Any and all legal proceedings filed between the parties relating to these Terms, the Products, the Services, or any Sales Quote, Daily Report or Purchase Order must be brought in the Cuyahoga County, Ohio Court of Common Pleas, which court will be the exclusive venue for any dispute, and the parties hereby consent to and submit to the exclusive jurisdiction of such Court.

MISCELLANEOUS. These Terms and all Sales Quotes and Daily Reports embody the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous letters, agreements, and understandings concerning the Products and Services. These Terms may not be amended without the prior written consent of the Company. These Terms must be interpreted and enforced in accordance with the laws of the State of Ohio, without regard to the choice or conflict of law rules otherwise applicable. No waiver of any right hereunder will be effective unless in writing, and no such waiver will constitute a waiver of any other right hereunder.