

## K6 APPAREL & PROMOS, LLC TERMS AND CONDITIONS

Please read these Terms and Conditions (the "Terms") of K6 Apparel & Promos, LLC ("K6") carefully. By signing a K6 Sales Order or Quote or by otherwise accepting delivery of any goods (the "Goods") from K6 or its suppliers, you ("Customer" or "You" or "Your") agree to the Terms set forth herein and to their incorporation by reference into the Sales Order or Quote to which they are appended.

K6 and Customer hereby agree that the K6 Sales Order or Quote, along with these Terms, constitute an agreement between K6 and Customer (collectively, the "Agreement") for the delivery of Goods by K6 to Customer.

1. **Sale of Goods; Prices.** K6 shall sell to the Customer and the Customer shall purchase from K6 the Goods identified in the Agreement in the quantities and at the prices stated therein. Unless otherwise stated in the Agreement, the Customer shall pay all taxes, tariffs, freight, shipping, and other such costs imposed on, in connection with, or measured by the transaction (collectively the "Shipping Costs") contemplated by the Agreement in addition to the prices for the Goods set forth therein or other costs identified in the Agreement. Prices stated in the Agreement are effective for three (3) calendar days from the date identified on the Sales Order or Quote and are subject to change thereafter without notice to Customer. Customer acknowledges and agrees that all Shipping Costs or other identified costs shall be added to the final invoice for payment by Customer to K6.

2. **Payment Terms; Security Interest.** Payment by Customer shall be made at time of delivery of the Goods by check or credit card. A finance charge of 1.5 percent per month (18 percent per annum) shall be charged on all account balances not paid at time of delivery. The Customer hereby grants to K6 a security interest in the Goods sold to the Customer under this Agreement and any proceeds therefrom (including accounts receivable), until payment in full for the Goods has been received by K6. The Customer shall sign and deliver to K6 any document necessary to perfect this security interest that K6 reasonably requests in the event Customer fails to pay K6 in accordance with the Agreement.

3. **Delivery; Title; and Risk of Loss.** K6 shall deliver the Goods FOB K6's designated supplier(s) or other delivery entity, including K6 itself. Title to and risk of loss of the Goods will pass to Customer upon such delivery. Any stated delivery dates by K6 are approximate. K6 shall not be liable for any losses, damages, penalties, or expenses for failure to meet any proposed delivery date.

4. **All Sales Final; No Returns or Exchanges; Sole Remedy for Defective Goods.** Customer agrees that all sales by K6 are final once K6 places the order with its suppliers. Once K6 has placed Customer's order with its suppliers, there shall be no returns or exchanges except in the event of non-conforming or otherwise defective Goods. If Customer receives such Goods, Customer's sole remedy shall be replacement of the defective Goods on a one to one basis. Customer must bring such claims to K6's attention in writing pursuant to the notice provisions in Section 19 of this Agreement within seven (7) calendar days from receipt of such defective Goods or forfeit the right to the exchange of such Goods. This shall be Customer's sole remedy for the receipt of defective Goods. Failure to notify K6 in writing about a claim for defective Goods as set forth in this Section 4 constitutes acceptance of the Goods as delivered.

5. **Quantity Changes by K6's Supplier; Effect on Prices.** With respect to all Goods being imprinted with Customer's chosen Intellectual Property (as that term is described below), Customer acknowledges that careful inspection by K6's suppliers at the place of manufacture may result in certain Goods being discarded by the supplier prior to fulfillment of any K6 order. If K6 delivers to Customer a quantity of goods of up to 10 percent more or less than the quantity set forth in the Agreement, Customer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Agreement adjusted pro rata.

6. **Disclaimer of Warranty.** All Goods sold under the Agreement are being sold "as is" except for non-conforming Goods, which Customer must address pursuant to the remedy provision of Section 4 above. K6 OTHERWISE DISCLAIMS ALL WARRANTIES OF QUALITY, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE IN RELATION TO THE GOODS. The Customer acknowledges that it has not been induced by any statements or representations of any person with respect to the quality or condition of the Goods and that no such statements or representations have been made by K6.

7. **Limitation of Liability and Damages.** K6 shall not be liable to Customer or third parties for any indirect, special, consequential, statutory, or punitive damages arising out of the purchase or use of the Goods, including, without limitation, lost profits, promotional expenses, and business interruption losses, whether sounding in breach of contract, tort, negligence, statute, equity or otherwise and irrespective of whether K6 has advised or been advised of the possibility of any such damages.

8. **Limitation of Actions; Remedies.** In the event Customer obtains defective Goods, the sole remedy shall be the replacement of such Goods on a one to one basis as described in Section 4 above. No other action arising out of or relating to this Agreement may be commenced against K6 more than 12 months after a breach of this Agreement. Before commencing any such action, Customer shall provide written notice to K6 of any such breach and allow K6 thirty (30) days from receipt of Customer's written notice to cure the breach. If K6 fails to timely cure, Customer shall have any and all remedies and rights available to Customer except as otherwise limited by this Agreement.

9. **Supplied Art; Set-Up Fees; Works for Hire; Art Fee.** If Customer provides K6 with camera-ready, color-separated vector art, there shall be no art charges for Customer on Goods being imprinted with Customer's art. Notwithstanding the foregoing, Customer agrees to pay any and all set-up fees charged to K6 by its suppliers. In the event Customer retains K6 to create art for Customer's use on Goods and thereafter fails to order Goods from K6, Customer shall pay K6 \$500 for its design services if Customer uses K6's art on Goods supplied by a vendor other than K6. In the event Customer fails to pay the \$500 fee upon K6's written request, then the artwork created hereunder shall be construed as a work for hire owned by K6.

10. **Intellectual Property Warranty; Indemnification.** Customer warrants and represents to K6 that Customer is the legal and beneficial owner, or is otherwise lawfully licensed to use by the legal and beneficial owner, of all right, title, and interest in and to the copyright, trademark, service mark, trade dress, or any other intellectual property or proprietary right (the "Intellectual Property") being applied by K6 or its suppliers on any Goods provided pursuant to this Agreement. Customer further warrants and represents to K6 that application of the Intellectual Property to the Goods by K6 or its suppliers does not violate, infringe, or otherwise conflict or interfere with the intellectual property or proprietary right of any third party. Customer shall indemnify, defend, and hold harmless K6, its affiliates and suppliers, and its and their officers, directors, employees, agents, suppliers, and subcontractors ("Indemnitees") against all claims, demands, suits, liabilities, costs, expenses (including attorneys' fees and costs), damages and losses suffered or incurred by the Indemnitees arising out of or in connection with the use of the Intellectual Property or any breach of the foregoing warranties and representations, including, without limitation, the defense of any claims for actual or alleged infringement of a third-party's rights in the Intellectual Property. In such event, Customer agrees that K6, in its sole discretion, may retain counsel of its own choosing to monitor or otherwise oversee Customer's (and its chosen counsel's) defense of K6 in relation to any such claims or actions.

11. **Disclaimer; Face Masks.** Goods provided under this Agreement consisting of face coverings or masks are provided as-is with all faults, and K6 specifically disclaims all warranties, express or

implied, including (without limitation) implied warranties of merchantability or fitness for a particular purpose. K6 specifically disclaims that masks will prevent infection or the transmission of viruses or diseases. Masks are not a substitute for professional medical advice, diagnosis, or treatment, and any medical questions should be directed to Customer's healthcare providers. The entire risk as to the quality and performance of the Goods subject to this Section 11 is with the Customer and its end-users. Should the quality or performance of the Goods identified in this Section 11 prove defective following its purchase, the Customer, and not K6 or its suppliers, assumes the entire cost of all necessary servicing or repair. K6 assumes no liability for inaccuracies or misstatements by third-party sellers.

12. **Governing Law and Designation of Forum.** The laws of the State of Wisconsin (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, validity, performance (including the details of performance), and enforcement. A party bringing a legal action or proceeding against the other party arising out of or relating to this Agreement or the transactions it contemplates must bring the legal action or proceeding in the state or federal courts of Washington County, Wisconsin. Each party to this Agreement consents to the exclusive jurisdiction and venue of such courts for the purpose of all legal actions and proceedings arising out of or relating to this Agreement or the transactions it contemplates.

13. **Force Majeure.** Neither K6 nor Customer will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond the reasonable control of the party invoking this Section 13: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy. For the avoidance of doubt, the rights of either party to invoke this Section 13 shall not include: (a) financial distress nor the inability of either party to make a profit or avoid a financial loss; (b) changes in market prices or conditions; or (c) a party's financial inability to perform its obligations hereunder.

14. **Assignment; Delegation.** The Customer may not assign any of its rights or obligations under this Agreement or delegate any performance under this Agreement, except with the prior written consent of K6. Any purported assignment of rights or delegation of performance in violation of this section is void.

15. **Recovery of Expenses; Attorneys' Fees.** In any proceedings between the parties arising out of or relating to this Agreement (including costs associated with K6's collection for non-payment for Goods sold), K6 shall be entitled to recover from the Customer, in addition to any other relief awarded, all expenses that K6 incurs, including reasonable attorneys' fees and litigation expenses. K6 shall have this right to recover only if it is the prevailing party on some or all of its claim against Customers.

16. **Indemnification of K6; Third Party Use.** In addition to Customer's obligations under Section 10 above, Customer shall indemnify and hold harmless K6 and its directors, members, officers, employees, agents, representatives, and affiliates from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, settlements, losses, judgments, costs and expenses (including attorneys' fees or other litigation expenses), which arise out of, relate to, or result from (a) any act or omission of Customer selling or otherwise providing the Goods to third parties; (b) Customer's breach of any term of this Agreement; (c) Customer's use of the Intellectual Property of a third party; (d) Customer's violation of applicable law or any agreement with a third party to which Customer is a party; and (e) the misuse of any Goods supplied under this Agreement by third parties who obtained the Goods from Customer. In such event, Customer agrees that K6, in its sole discretion, may retain counsel of its own choosing to monitor or otherwise oversee Customer's (and its chosen counsel's) defense of K6 in relation to any such claims or actions.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement in relation to the sale of the Goods. It supersedes all other agreements, whether written or oral, between the parties. No purchase order, purchase acknowledgement, or other writing issued by Customer in relation to the sale of the Goods shall control the transaction contemplated by this Agreement, no matter when issued.

18. **Amendments; Modification.** No amendment or modification to this Agreement will be effective unless it is in writing and signed by all parties.

19. **Notice.** Any notices required under this Agreement mean written notice delivered to K6's or Customer's principal agent via overnight service such as UPS, FedEx, or other common carrier. Notice via electronic or U.S. Mail is insufficient notice under this Agreement.

20. **Counterparts; Electronic Signatures.** This Agreement may be signed in one or more counterparts, which together will form a single agreement. This Agreement (and any amendments or modifications to it under Section 18) may be signed electronically.

21. **Severability.** If any provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part, such provision or part thereof shall not affect the legality, enforceability, or validity of the remainder of the Agreement.

22. **Waiver.** No waiver of a breach, failure of any condition, or the enforcement of any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach or the enforcement of the right or remedy. No such written waiver shall constitute a continuing waiver unless the writing so specifies.

23. **Authority to Execute; Comprehension.** The individual who has executed this Agreement on behalf of the Customer warrants and represents that they understand each and every term of this Agreement and are here authorized to sign it in the name of the Customer.