

Kobo USA, LLC

**TERMS AND CONDITIONS OF SALE**

Kobo USA, LLC ("Kobo USA") is offering for sale its products, parts, equipment and accessories (collectively and individually, the "Product(s)") identified herein, subject to the following terms and conditions (the "Terms and Conditions"). The Terms and Conditions set forth the legally binding terms with respect to the purchase of the Product(s). The Customer (as identified by purchasers of the Product(s) and/or services offered by Kobo USA) ("Customer"), in consideration of the mutual covenants, agreements and provisions set forth herein and hereon, hereby agrees that the purchase of the Product(s) offered by Kobo USA shall be subject to and in accordance with the following terms and conditions of sale:

**1. ORDERS, APPLICABILITY**

Customer order(s) for Product(s) shall be subject to these terms and conditions of sale as well as an authorized quotation issued by Kobo USA. Such order(s), if accepted by Kobo USA, shall have significance as a reference document only. The parties hereby agree that these terms and conditions shall govern and control the relationship between Kobo USA and the Customer, that the terms and conditions contained herein shall supersede the terms and conditions contained in a Customer-issued order, and that any deviation from these terms and conditions needs to be expressly agreed upon by both parties, Kobo USA and the customer. Kobo USA reserves the right to refuse orders in its sole discretion, or to accept such orders on a separate contract form or to limit the types and amounts of the Product(s) ordered.

**2. PRICES**

Prices for the Product(s) shall be the then current prices for such Product(s) in effect at the time of acceptance of an order by Kobo USA or in accordance with an authorized and valid Kobo USA quotation. Prices are exclusive of all charges or levies of any nature including all federal, state, municipal or other governmental excise, sales, use, occupational or like taxes now in force or enacted in the future and, therefore, are subject to an increase in amount equal to any tax Kobo USA may be required to pay upon the sale or delivery of Product(s) purchased. If a certificate of exemption or similar document is required in order to exempt the sale from sales or use tax liability, Customer will obtain and furnish evidence of such exemption at time of placement of order together with the purchase order. All prices are subject to adjustment on account of changes in specifications, quantities, shipment arrangements, and the like or the inclusion of terms and conditions which had not been part of any valid price quotation issued by Kobo USA.

**3. PAYMENT TERMS; REVOCATION OF CREDIT**

Unless otherwise specified by Kobo USA in writing, payment terms shall be due net from date of invoice. In the case of late payments, Kobo USA shall be entitled to charge interest as follows: 2.5 % or the legal statutory rate, which is higher, on all amounts due more than thirty (30) days.

The obligation of Kobo USA to ship the Product(s) or otherwise perform hereunder shall be subject to the then current credit terms and policies as established by Kobo USA. Further, Kobo USA reserves the right at any time when, in its opinion, Customer's financial condition or other circumstances warrants it, to revoke, alter or suspend any credit already extended, or to require full or partial payments in advance of any shipment or other performance, or to other-wise defer or decline to make shipments under this Agreement and/or terminate this Agreement or any order accepted hereunder without liability to Customer.

**4. SHIPMENT**

All Products furnished hereunder shall be shipped ex works Kobo's factory in Wuppertal, Germany whereupon the risk of loss, title in and right of possession of the Product(s) and responsibility for all transportation expenses shall pass to the Customer upon delivery to the carrier. Subject to Kobo USA's right to stop shipment of Products already in transit, such carrier shall thereafter be deemed to be acting for Customer regardless of the carrier used or the freight terms. If shipment is requested by Customer, it will be made "best way," either prepaid or collect, as requested by Customer. If Customer requests prepaid shipment, actual charges incurred shall be billed and shall be due and payable to Kobo USA in accordance with Kobo USA's regular payment terms. Kobo USA will not assume any liability in connection with such shipment, nor shall any carrier be its agent. All shipping dates quoted or otherwise agreed to by Kobo USA are estimates only. Kobo USA will use its best efforts to meet scheduled dates, but assumes no liability for failure to do so.

**5. FORCE MAJEURE**

Kobo USA shall not be responsible for delays or non-performance directly or indirectly caused by governmental regulations or requirements, acts of God, unavailability of materials, work stoppages, slowdowns, boycotts or other causes beyond Kobo USA's reasonable control. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of the delay, and Customer shall not be entitled to refuse delivery or otherwise be relieved of any obligations hereunder.

**6. LIMITED WARRANTY**

All Products offered by Kobo USA are warranted to the original purchaser of the Product(s) ("Purchaser") to be free from defects in material and workmanship for a period of twenty four (24) months from the date of installation but no longer than 30 months from the date of shipment per Kobo USA's records. During the term of the warranty, Kobo USA will replace any Product(s) or part(s) thereof which prove to be defective in material and workmanship. A replacement will not be made for damage due to abuse, misuse, neglect, accident, regular wear and tear or improper installation. It does not include any damage incurred during the shipping process. Kobo USA is not responsible and will not pay any labor charges, damage incurred during installation, repair, or replacement, damage incurred to other related part(s), injuries, loss of income, incidental and consequential damages, damages or any other loss whatsoever connected therewith.

**Warranty Terms**

**A. Enforcement of Warranty**

**Notice**

The Purchaser shall notify Kobo USA in writing of any defects in the Product(s) that the Purchaser has detected and requires to be corrected under this Warranty. Such notice shall be made without delay, but in any case within ten (10) days of detecting the defect and during the term of the Warranty. The notice shall contain a description of the defect and a description of the probable cause of it.

**Remedy**

If, after appropriate tests and inspections by Kobo's laboratory, the Product(s) or a part thereof is found to have defects that fall within this Warranty, exclusive remedy shall be made, at the sole option of Kobo USA, by either repairing the defects or faults, or by supplying the respective correct chain or part to the Purchaser. Either Kobo USA or the Purchaser or a third party shall perform repairs, at Kobo USA's discretion.

**B. Precondition for Warranty Handling**

This Warranty is given on the condition that the Product(s) is in all respects erected, operated, handled, serviced and maintained properly and is running under normal operating conditions on new sprockets. Purchaser shall perform quarterly inspections and measuring reports on the product and send them to Kobo USA for review. Purchaser shall record lubrication and maintenance on the product and provide that information to Kobo USA quarterly. Without these reports Kobo is unable to give any kind of warranty.

**Exclusions**

Excluded from the Warranty are, and Kobo USA shall have no responsibility for damage of any kind as a result of one of the following events: the repair and replacement of the Product(s) or any part thereof due to normal wear and tear, vandalism, accidents, negligence, or otherwise without any fault of Kobo USA; repairs, alterations or adjustments to the Product(s) performed or originated by the Purchaser or any third party without Kobo USA's prior written consent; unsuitable raw or working materials have been used when operating the Product(s); unreasonable use, misuse, abuse, accident, alteration, modification, neglect, lack of maintenance, or use after the Product(s) is significantly worn. The Warranty described above applies only to Products manufactured by Kobo USA.

**Report of Date of Installation**

The Purchaser shall notify Kobo USA in writing of the exact date of installation of the Product(s).

**C. Defective Part(s)**

**Transportation**

The Purchaser shall bear the cost and risk of transport of defective Product(s) or any part thereof to Kobo USA's facility, while Kobo USA shall bear the cost and risk of transport of repaired or replacement Product(s) or any part thereof to the port of destination. Kobo USA will pay for the ocean/ground freight using the same method of transportation and port of destination than for the original shipment. Kobo USA will not be responsible for additional duties charged for bringing a shipment of "warranted item" into any country and Kobo USA will not refund duties already paid by the Purchaser for the defective Product(s) or any part thereof. Kobo USA will not take over any expedited air shipment charges.

Defective Part(s) and their Return

At Kobo USA's request, defective part(s) replaced in accordance with this Warranty shall be placed at the disposal of Kobo USA. Any defective part(s) shall not be returned without authorization of Kobo USA.

**D. Payments due by the Purchaser**

**Monies Due**

Any monies due to be paid by the Purchaser to Kobo USA shall be paid in full, and Kobo USA shall credit the Purchaser for any warranty claims separately, if necessary.

**Deductions**

Should the Purchaser make any deductions, Kobo USA shall forthwith be discharged from the performance of its obligations under this Warranty until the Purchaser has paid Kobo USA such deduction in full.

**E. Other Exclusions**

All claims beyond those allowed in these Terms and Conditions for any loss or damage from whatever cause arising, including damage to the Purchaser's property, shall be excluded and hereby waived by the Purchaser unless such claim is made based on intentional bad acts or gross negligence by the owner or executives of Kobo USA. In such case, damages shall be limited to those that are reasonably foreseeable as a result of the intentional bad acts or gross negligence.

THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESSED OR IMPLIED, AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE AND ALL OTHER WARRANTIES ARISING FROM THE COURSE OF DEALING OR USAGE OF TRADE ARE HEREBY EXCLUDED. THE REMEDIES PROVIDED HEREIN ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE BY Kobo USA TO COMPLY WITH ITS WARRANTY OBLIGATIONS. CORRECTION OF THE NONCONFORMITIES IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED HEREIN SHALL CONSTITUTE COMPLETE FULFILLMENT OF Kobo USA'S OBLIGATIONS REGARDING DEFECTIVE PRODUCT(S), WHETHER THE CLAIMS BY THE CUSTOMER ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

**7. INTELLECTUAL PROPERTY**

A. Kobo USA may discontinue, without liability, delivery of Product(s) if, in its opinion, their use would constitute patent, copyright, trademark or trade secret infringement.

B. Kobo USA makes no warranty against patent, copyright, mask work, trademark or trade secret or other infringement by Product(s) if designed to Customer's specifications, or if used in combination with non-Kobo USA supplied equipment or devices, and if a claim, suit or action is based thereon, Customer shall defend, indemnify and save harmless Kobo USA therefrom.

**8. LIMITATIONS OF LIABILITY; EXCLUSIVE REMEDY**

Kobo USA will not be liable to Customer under this Agreement, whether in contract, in tort (including negligence) under any warranty or otherwise for any special, indirect, incidental or consequential loss or damage, or loss of profits or revenues even if Kobo USA has been advised of the possibilities of such damages. The remedies set forth in Sections 6 and 7 of this Agreement are exclusive, and Kobo USA's liability for damages to the Customer for any cause whatsoever, including performance or non-performance by Kobo USA or Product(s) provided hereunder, regardless of the form of the action, under any warranty or otherwise will be limited to the remedies provided therein.

**9. CANCELLATION OR POSTPONEMENT BY CUSTOMER**

Orders accepted by Kobo USA cannot be canceled or shipments postponed except by written notice to Kobo USA. In the event that Customer cancels or postpones an order(s) or any part thereof, Kobo USA's standard cancellation or postponement charges will apply.

**10. DEFAULT**

A. Any of the following will constitute an act of default hereunder. Customer: is or becomes insolvent or a party to any bankruptcy or receivership proceeding or any similar action affecting the financial condition or property of Customer and such proceeding has not been dissolved within 30 days; makes a general assignment for the benefit of creditors; or ceases doing business in the normal course.

B. In the event an act of default shall occur, Kobo USA shall have the right to and may elect any or all of the following remedies which shall be cumulative and not exclusive: Declare the particular order out of which the default arises to be immediately terminated; Declare, at its option, all charges incurred but unpaid relative to the order to be immediately due and payable; Exercise any or all remedies specified in this Agreement or any supplement associated herewith; and Pursue each and every remedy available at law or in equity

**11. GOVERNING LAW**

This Agreement and any order accepted hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the State of Georgia, exclusive of its conflict of laws provisions.

**12. ARBITRATION**

Except as provided below, the parties agree to submit any disputes relating to this Agreement and the purchase of Product(s) to arbitration, applying the American Arbitration Association Rules for Commercial Disputes. The proceedings shall be held in Atlanta, Georgia, be in English, and any award shall be enforceable in any court of competent jurisdiction according to the laws of the state of Georgia and the United Nations Convention for the Enforcement and Recognition of Arbitral Awards unless the nature of the dispute is suitable to injunctive relief thereby affording a party the right to pursue redress in court without proceeding to arbitration. Any dispute arising under this Agreement that cannot be arbitrated as provided herein shall be brought only in a court of competent jurisdiction in Cobb County, Georgia, USA, with the parties waiving any defense of venue or personal jurisdiction.

**13. ASSIGNMENT**

Customer shall not delegate any duties or assign any rights or claims under this Agreement without Kobo USA's prior written consent, and any such attempted delegation or assignment shall be void.

**14. COMPLIANCE WITH LAWS**

Customer, this Agreement and all Product(s) purchased hereunder are subject to all laws, regulations, orders or other restrictions that may now or hereafter be imposed by the government of the United States or any agency thereof, including but not limited to all regulations relating to the sale, export, re-export or redistribution of equipment.

**15. GENERAL**

A. If any of the provisions of this Agreement are found invalid under any applicable statute or rule of law, such provisions are, to that extent, deemed omitted, but this Agreement and the remainder of its provisions shall otherwise remain in effect.

B. No provisions of this Agreement shall be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is in writing and signed by the parties.

C. The waiver of one default under this Agreement shall not be deemed a waiver of subsequent or similar defaults.

D. Each order under this Agreement shall be treated as a separate contract and default by either party arising out of a particular order shall not constitute or be deemed to constitute a default of any other order or this Agreement itself. No lawsuit, regardless of form, arising out of this Agreement may be brought more than two years after the cause of action occurs.

**THESE TERMS AND CONDITIONS SHALL SUPERSEDE AND TAKE PRECEDENCE OVER ALL**

**PROPOSALS, CUSTOMER PURCHASE ORDERS OR ANY OTHER WRITTEN OR ORAL COMMUNICATIONS BETWEEN THE PARTIES, EXCEPT AS OTHERWISE PROVIDED HEREIN.**

**RECEIPT BY THE CUSTOMER OF PRODUCT(S) HEREUNDER SHALL BE DEEMED CONCLUSIVE**

**EVIDENCE OF CUSTOMER'S AGREEMENT THAT THE PURCHASE, USE AND POSSESSION OF PRODUCT(S) IS GOVERNED EXCLUSIVELY BY THESE TERMS AND CONDITIONS.**

**June 2018**