

These Terms and Conditions of Sale apply to all quotations, orders and contracts for KMPT products (hereafter "Goods"). As used in these Terms and Conditions of Sale, the word "Goods" includes all hardware, parts, components, software and options.

1. PRICES – Prices for the Goods listed herein are DDP Plant Site unless otherwise specified by Seller in writing. Seller's prices may not include all federal, state, municipal or other government excise, sales, use, occupational, processing, transportation or like taxes now in force or enacted in the future. Buyer shall pay any taxes Seller may be required to collect or pay now or at any time in the future (including interest and penalties imposed by any government authority), or any taxes Buyer may be required to pay, that are imposed upon the sale, delivery or support of Goods purchased or licensed as a part of this order, or Buyer shall provide Seller with a tax exemption certificate acceptable to the appropriate taxing authorities.

2. OFFER AND ACCEPTANCE – Unless otherwise specified in writing, all quoted prices are firm for thirty (30) days from the date of the quote. Stenographic, clerical and mathematical errors are subject to correction. **SELLER'S ACCEPTANCE OF ANY OFFER MADE BY BUYER SHALL BE EXPRESSLY CONDITIONAL ON BUYER'S ASSENT TO THESE CONDITIONS OF SALE.** If Seller's quotation to Buyer is deemed to be an offer made by Seller to Buyer to sell the Goods as specified herein, Buyer's acceptance of such offer shall be expressly limited to Buyer's acceptance of these Conditions of Sale and Seller hereby objects to and rejects any terms contained in any Buyer's documents, which are in addition to or in conflict with any of these Conditions of Sale. Buyer acknowledges receipt of these Conditions of Sale prior to placing an order with Seller and expressly represents and affirms unto Seller that Buyer has read, understands and accepts Seller's Conditions of Sale as herein set forth.

3. CHANGES AND CANCELLATIONS – All orders accepted by Seller shall be firm and no changes or cancellation shall be allowed without the mutual written consent of Buyer and Seller. If Buyer attempts to cancel or repudiate an order previously accepted by Seller, all work on the order or part there of canceled or repudiated will be stopped as promptly as is reasonably possible and Buyer will pay Seller a cancellation charge as reasonable and liquidated damages. For completed Goods, the cancellation charge will be equal to the price specified for such Goods in the canceled or repudiated order. Except for Goods specially manufactured, the cancellation charge for Goods not completed will be equal to 120% for the full cost of their production as determined by Seller, less a credit for the balance of the material as scrap. The cancellation charge for Goods specifically manufactured will be equal to the price specified for such specially manufactured Goods in the canceled or repudiated order regardless of whether such specially manufactured Goods are completed or not. The cancellation charge shall include burden and overhead costs incurred by Seller or by any of Seller's affiliates.

4. SPECIALLY MANUFACTURED GOODS – Seller's quotation, acceptance and performance of any order for Goods specially manufactured to Buyer's specifications assume timely receipt of all required information.

5. DELIVERY – The shipping schedule is Seller's current estimate of delivery dates and Seller agrees to use reasonable efforts to comply with such schedule. Buyer's acceptance of delivery of the Goods shall constitute a waiver of any claim for delay.

Delivery dates are specified only as Seller's best estimate from the date of final order, based on complete drawings, specifications and other information required to be furnished by Buyer.

Title to the Goods passes to Buyer upon Buyer's signing of a Delivery Certificate. Buyer agrees to sign the Delivery Certificate tendered by Seller, or promptly give Seller in writing its objections thereto. Buyer agrees to promptly sign said Delivery Certificate when Seller has reasonably satisfied Buyer's written objections. If Buyer does not promptly sign a Delivery Certificate, Buyer shall be deemed to have refused delivery of the Goods, and the Seller, in addition to any other remedies available herein (in law or equity), shall be entitled at any time to immediately remove the Goods from Buyer's then location and to retain the same.

If Buyer fails to take delivery promptly, Seller shall not be deemed responsible for the eventual delivery of the Goods unto Buyer.

Risk of loss shall pass to Buyer upon Buyer's signing of a Delivery Certificate. Seller shall not be responsible for the storage, protection, or insurance of the Goods after the risk of loss passes to Buyer. Until the Goods are fully paid for, Buyer agrees to keep the Goods fully insured against all losses.

Buyer may obtain a delay in scheduled shipment by notifying the Seller in writing of the revised shipping date and paying Seller a delayed shipment fee equal to 2% of the price per month for each month, or part thereof, that the revised shipping date exceeds the original scheduled shipping date hereunder.

Seller will not be liable for delays resulting in any governmental actions (such as Customs inspections, for example) or for delays resulting from freight carriers which are not in the control of the Seller.

6. FORCE MAJEURE – Seller is not responsible for any delay or failure in shipment, transportation or delivery due to or arising from shortage of raw materials, fires, strikes, lockout, labor troubles of any kind, floods, droughts, severe weather, earthquakes, civil commotions, accidents, acts of God, insurrections, war or consequences of war, breakdown of machinery, embargoes, perils of the sea, railroad embargos, governmental acts, restrictions, or failure of sub-suppliers to deliver, suspension of shipping facilities, acts of omission, commission, negligence or default of any carrier or any other contingencies of whatsoever nature beyond Seller's reasonable control or any other unavoidable causes.

7. PAYMENTS – All terms of payment shall be as specified by Seller in writing and shall be made in good funds (U.S. Dollars) without set off or deduction. If the Goods are ready for shipment on or after the scheduled shipping date and the Goods cannot be shipped because of Buyer's request for delayed shipping, or for any other reason beyond Seller's reasonable control, payment shall be made upon notification to Buyer that the Goods are ready for shipment, or as otherwise specified by Seller in writing. Seller may decline at any time either to accept an order, or to ship the same, until Seller has received payment. Unpaid balances shall bear interest from the due date at the rate of 1.5% per month not to exceed the applicable legal rate.

Buyer hereby grants to Seller, for and in consideration of Seller providing the financing terms for the Goods, a purchase money security interest in the Goods, all additions, attachments, accessories, parts, replacements, substitutions and renewals thereof, wherever situated, and the proceeds and products of all of the foregoing (the "Collateral") to secure a payment of any and all indebtedness of Buyer to Seller, including the purchase price and the performance of all obligations of Buyer herein. Buyer shall reimburse Seller for all expenses, including reasonable attorney fees and legal expenses incurred by Seller in seeking to collect any amounts owed to Seller from Buyer, in defending the priority of Seller's security interest in the Collateral, or in pursuing any of Seller's rights or remedies hereunder. By execution of acceptance of this Agreement, Buyer hereby consents to and authorizes the Seller to execute and file in any applicable jurisdiction one or more financing statements (UCC-1) or other documents evidencing Seller's security interest in the Collateral. A carbon, photographic or other reproduction of this Agreement shall be sufficient to qualify as a financing statement and security agreement under the Uniform Commercial Code (UCC) of any jurisdiction where the Goods are located and may be filed by the Seller as such in any filing office.

8. SPECIFICATIONS AND DRAWINGS – Specifications, statements, drawings and descriptions regarding weights, dimensions, rate of speed and/or capacity and other details supplied by Seller are approximate and descriptive only and not intended or designed as warranties. After Buyer's order has been accepted by Seller one set of accurate outline drawings will be supplied to Buyer free of charge on request.

Seller retains the right of ownership of copyright in respect to all drawings. No drawings may be made available unto any third parties whomsoever without Seller's prior written consent.

9. LIMITED WARRANTY – Seller warrants that the Goods shall be free from defects in material and workmanship for a period of twelve (12) months from the date of start-up or eighteen (18) months from the date the Goods are delivered to Buyer, whichever comes first.

This Warranty is contingent upon the following: that Seller promptly receives written notice of any defect; that Buyer establishes that the Goods have been properly installed, maintained and operated within the limits of related and normal usage as specified by Seller; and that upon Seller's request, Buyer will return to Seller at Buyer's expense any defective Goods or parts thereof.

If Buyer, after delivery, shall modify, alter, substitute or change any of the Goods acquired from Seller, then Seller's warranty with respect thereto shall be null and void and of no force and effect whatsoever.

This Warranty of Seller does not extend to: (i) damage caused by corrosion; (ii) damage to parts subject to wear, including, but not limited to, defects in motors, controls, timers, or valves; (iii) damage caused by Buyer's improper selection of materials of construction; (iv) damage caused by Buyer's failure to provide suitable installation environment for the Goods; (v) damage caused by the use of the Goods for purposes other than those for which they were designed; (vi) damage caused by disasters such as fire, flood, wind and lightning; (vii) damage during shipment; and (viii) parts or components not manufactured by KMPT USA, Inc. but any manufacturer's warranties of such accessory equipment will be passed through Seller to Buyer),

The conditions of actual production in each end user's plant vary considerably. Therefore, descriptions of the production or performance capabilities of the Goods are estimates only and are not warranted.

10. WARRANTY DISCLAIMER – THE WARRANTIES SET FORTH IN THESE CONDITIONS OF SALES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE WAIVED.

11. EXCLUSIVE REMEDY – Buyer agrees that Buyer's sole and exclusive remedy against Seller with respect to any claim of any kind relating to the Goods shall be limited to the repair and/or replacement of nonconforming or defective Goods, DDP Plant Site. This Exclusive Remedy shall not be deemed to have failed of its essential purpose provided Seller is willing and able to repair and/or replace the nonconforming or defective Goods.

12. LIMITATION ON LIABILITY – Buyer assumes all risk and liability arising from, growing out of or connected with the operation and/or use or any and all of the Goods and Buyer shall be deemed exclusively responsible for the proper and safe operation of the Goods within the normal range of specifications of operations for which the Goods have been designed and sold by Seller.

Buyer agrees that Seller shall not be liable for any loss, damage or injury resulting from delay in delivery or installation of the Goods. The maximum liability, if any, of Seller for all damages, including without limitation contract damages and damages for injuries to persons or property, whether arising from Seller's breach of the Agreement (as defined in paragraph 15(a)), breach of any warranty, negligence, strict liability or other tort, shall be limited to an amount not to exceed the sum of all payments (without interest thereon) made by Buyer to Seller with respect to the Goods at issue in the dispute. **IN NO EVENT SHALL SELLER OR ANY AFFILIATE OF SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES AND PROFITS OR CLAIMS ARISING FROM CONTRACTS BETWEEN BUYER AND ITS CUSTOMERS OR SUPPLIERS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

13. LIMITATION OF PERIOD TO COMMENCE ACTION - Any action brought by Buyer against Seller relating to the Goods, including without limitation any action for breach of the Agreement (as defined in paragraph 15(a)) or breach of any warranty, must be commenced within one (1) year following the date the Goods at issue are delivered to Buyer.

14. INDEMNIFICATION – Buyer agrees to protect, defend, indemnify and save Seller harmless from any and all expenses, attorneys' fees, claims, demands or causes of action relating to any alleged infringement of a U.S. or foreign patent arising out of Seller's compliance with Buyer's specifications for specially manufactured Goods sold by Seller to Buyer to meet Buyer's particular needs (and not a part of Seller's standard line offered to the industry generally); or Buyer's use of any of the Goods.

15. NONCONFORMING GOODS – In the event of any nonconforming goods, the Buyer's sole and exclusive remedy against Seller with respect to any claim of any kind relating to the goods shall be limited to the repair and/or replacement of nonconforming or defective goods, DDP Plant Site. This exclusive remedy shall not be deemed to have failed of its essential purpose provide Seller is willing and able to repair and/or replace the nonconforming or defective goods.

The Buyer shall not proceed with performing on its own or through an agent any work on the Goods to correct warranty nonconforming issues without receiving the prior written consent of Seller; provided, however, in the case of imminent danger to life or property, Buyer may proceed with work to correct warranty nonconforming items, but must notify Seller in writing of the situation as soon as practical to do so. Seller shall not be obligated to provide its approval until Buyer has provided in writing cost estimates for such corrections or replacements. Seller will correct or replace any items not in conformance with the Agreement. Buyer accepts that Seller will not be responsible for indirect or consequential costs of correcting such work.

16. CONFIDENTIAL INFORMATION – Seller shall keep confidential any technical process, commercial or economic or other information furnished by Buyer, or specifications or other data furnished by Buyer in connection with this order and shall not divulge, export or use, directly or indirectly, such information for the benefit of Seller or any other party without obtaining Buyer's prior written consent. Except as required for the efficient performance of this order, Seller shall not make copies or permit copies to be made of such drawings, specifications or other data without the prior written consent of Buyer. If any reproduction is made with prior consent, this notice shall be provided thereon. Upon completion or termination of this order, Seller shall promptly return to Buyer all materials and any copies thereof, except for one record copy incorporating any such information.

Performance of this Agreement will require Seller to disclose data and information to Buyer, or to third parties such as consulting engineers or contractors, some of which data and information will be Seller's proprietary data, information and know-how. Such proprietary data, information and know-how when in tangible form shall be clearly identified and appropriately marked as CONFIDENTIAL or PROPRIETARY or CONFIDENTIAL INFORMATION. The Buyer agrees (a) to hold in trust and maintain confidential; (b) not to disclose to others without written approval of the Seller, and (c) not to use for other than the purpose of installing and operating the Goods and the project for which the products under this Agreement are procured, the information received from Seller hereunder. However, the foregoing obligations of confidence, non-disclosure and non-use shall not apply to any data or information to the extent that Buyer can show by written record or documentation that: (1) such information was in its possession prior to its receipt from Seller and was not obtained directly or indirectly from Seller or its predecessors in interest; or (2) such information is or becomes knowledge generally available to the public other than by acts or omissions of Buyer in violation of this Agreement; or (3) such information is subsequently received on a non-confidential basis from a third party who had an independent right to such information and who did not receive it directly or indirectly from Seller; or (4) such information is legally required to be disclosed, provided that Seller is promptly notified of any request for such records and afforded reasonable opportunity to obtain protective orders or similar restraints with respect to such disclosure. The Buyer shall limit access to such data and information to its officers, employees and agents, and to those of its customer, that reasonably require access to the information in connection with the engineering, construction, start-up, commissioning, maintenance or other purposes reasonably related to the project and plant in which the products provided by Seller are installed, and such disclosures shall only be to the extent that any proposed further recipient has entered into a non-disclosure and non-use agreement to protect the Confidential Information proposed to be disclosed, and further, only if such information, if in tangible form, is marked with appropriate proprietary data or confidential business information legend or restrictions in the form as originally provided by Seller.

17. GENERAL

- a. **Entire Agreement.** Seller and Buyer expressly stipulate and agree that Seller's quotation to Buyer, Buyer's purchase order to Seller (excluding any terms which are in addition to or in conflict with these Conditions of Sale), Seller's Order Confirmation, and these Conditions of Sale, all in writing, shall constitute the entire agreement and understanding between Buyer and Seller relating to this transaction (collectively, the "Agreement") and that there are no other agreements or understandings, expressed or implied, verbal or written, between them concerning the same.
- b. **Modification.** No modification of the Agreement shall be effective unless made in writing and signed by both parties.
- c. **Severability.** If a provision of the Agreement is held to be invalid or unenforceable, the Agreement shall continue in full force and effect and shall be construed as if the invalid or unenforceable provision was omitted.
- d. **Waiver.** No waiver of any breach of the Agreement shall be construed as a waiver of any prior, concurrent or subsequent breach hereof.
- e. **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.
- f. **Arbitration.** Any controversy or claim, legal or equitable, arising out of or relating to the Agreement, or the breach thereof, shall be settled by an arbitration procedure agreed to by the parties, or absent such an agreed arbitration procedure, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitration proceeding shall take place and the arbitration award shall be given in writing in Covington, Kentucky unless the parties agree otherwise.
- g. **Assignment.** Neither the Agreement nor any rights or benefits hereunder are assignable by Buyer without the prior written consent of Seller. Any such prohibited assignment shall be null and void.
- h. **Attorney's Fees.** In the event that Seller is the prevailing party in any action, proceeding or arbitration between Buyer and Seller concerning the interpretation and/or enforcement of any of the terms or provisions of the Agreement, Buyer shall be liable to Seller for all costs, including reasonable attorney's fees, incurred by Seller with respect to such action, proceeding or arbitration.