



KIS TERMS AND CONDITIONS CONTROL THE AGREEMENT

1. These terms and conditions are incorporated into and made a part of the agreement ("Agreement") by KIS and any of its affiliates ("KIS") to sell to the named Buyer the goods referenced on the face of this document ("Goods"). The Agreement expressly limits Buyer's acceptance to these terms and conditions. Buyer may reject the Agreement by not ordering or receiving any Goods. The Agreement does not constitute an acceptance by KIS of any offer or counteroffer of Buyer, and KIS hereby rejects any additional, different, or inconsistent terms, conditions or limitations contained in or incorporated by reference in any forms, purchase orders or other documents of Buyer that already have been or hereafter may be presented to KIS with respect to the Agreement.

2. If Buyer has submitted or will submit additional and/or different terms and conditions to KIS, or submit a counteroffer to KIS, KIS's subsequent performance will not be construed as either acceptance of Buyer's additional and/or different terms and conditions or Buyer's counteroffer, nor will KIS's subsequent performance be viewed as a willingness to accept any provision of the Uniform Commercial Code, as adopted by any State or Commonwealth, that is contrary or in addition to any of the terms and conditions hereof.

PRICES

3. Unless otherwise agreed to by KIS in writing, KIS's prices for the Goods will be the prices stated on the face of this document or KIS's standard prices for such Goods as of the date hereof; provided, however, that KIS may change the price for the Goods in accordance with any change to its standard pricing for such Goods prior to the date of shipment of Goods.

SPECIFICATIONS

4. Unless KIS has expressly agreed otherwise in writing, it is Buyer's responsibility to ensure that the Goods are the ones that it has requested and that all specifications and quantities are correct. **KIS HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES THAT GOODS CONFORM TO ANY SPECIFICATIONS, DRAWINGS, DESIGNS, OR SAMPLES.**

SHIPMENT OF GOODS; PERFORMANCE OF SERVICES

5. Any shipping dates for Goods given in advance of actual shipment of Goods are KIS's best estimates for informational purposes only, and deliveries of Goods will be made subject to prior orders on file with KIS. Unless otherwise agreed to by KIS in writing, KIS may, in its sole discretion, use any commercial carriers for shipment of the Goods. KIS will use its reasonable efforts to comply with Buyer's requests as to method and route of transportation, but KIS reserves the right to use an alternate method or route of transportation, whether or not at a higher rate.

6. Unless otherwise agreed to by KIS in writing, Buyer will pay all insurance costs in connection with delivery of the Goods, if any, and be responsible for filing and pursuing claims with carriers for loss of, or damage to, Goods in transit.

7. Buyer is responsible for obtaining at its sole cost and expense any and all necessary licenses and permits for the Goods, including, without limitation, any licenses and permits for transportation.

8. If Buyer is unable to receive the Goods when they are tendered, Buyer will be liable to KIS for any losses, damages, or additional expenses incurred or suffered by KIS as a result of Buyer's inability to receive the Goods.

9. Buyer will immediately inspect all Goods upon its receipt of them and will be deemed to accept the Goods upon receipt. Any claims for shortages or discrepancies will be waived by Buyer unless made in writing to KIS within five days of receipt of the Goods.

10. KIS may cancel in whole or in part any order for Goods under the Agreement at any time.

11. Until Buyer has fully and finally paid all amounts owed to KIS for any Goods, Buyer shall hold such Goods in trust for KIS, and KIS may repossess them if Buyer fails to pay for them in a timely fashion.

PAYMENT

12. All payments for Goods must be made in United States currency unless specified in writing by KIS. Payments for Goods will be made by such means as KIS may specify, such as by check or wire transfer, provided that KIS may refuse, in its sole discretion, payment by any means, including, without limitation, credit cards.

13. Payment for Goods is due within 30 days from the date of KIS's invoice; provided, however, that KIS reserves the right, in its sole discretion, to require full payment in cash before order entry, shipment, or delivery.

14. KIS shall have the right to offset any and all amounts due and owing from KIS to Buyer under this Agreement, including, without limitation, any chargebacks or rebates, against any amounts due and owing from Buyer to KIS under this Agreement.

15. If Buyer defaults in payment, Buyer will be liable for all collection costs incurred by KIS including, but not limited to, attorneys' and collection agency fees, and all related disbursements.

16. If Buyer does not pay when payment is due, past due amounts are subject to service charges of one and a half percent (1 ½%) per month or the maximum percentage rate permitted by law, whichever is less.

TAXES

17. The purchase price of the Goods does not include transportation taxes and sales, use, excise, import or any similar tax or other governmental charge arising pursuant to or in connection with the sale, purchase, processing, delivery, storage, use, consumption, performance or transportation of the Goods. Buyer is responsible for payment of any transportation taxes, and any present or future sales, use, excise, import or any similar tax or other governmental charge applicable to the Agreement and to the sale and/or furnishing of the Goods.

CANCELLATION

18. Buyer may cancel its order for Goods, but only if KIS agrees to such cancellation in writing and only after Buyer pays reasonable charges for expenses already incurred and commitments made by KIS in connection with the placement of such order(s).

DISCLAIMER OF WARRANTIES

19. **KIS HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN OR ORAL, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY CONTRACT, AT LAW, IN EQUITY, BY STRICT LIABILITY OR OTHERWISE, WITH RESPECT TO THE GOODS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY AGAINST DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY AGAINST REDHIBITORY DEFECTS, ANY WARRANTY OF GOOD TITLE, AND ANY WARRANTY AGAINST INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY PATENTS, TRADEMARKS, OR COPYRIGHTS.** KIS shall, however, if given prompt written notice by Buyer of any claim of alleged patent, trademark or copyright infringement with respect to any Goods use its reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may offer with respect to such Goods.

EXCLUSIVE REMEDY

20. Buyer's **EXCLUSIVE** remedy against KIS for any claim for, or arising out of any in a Good tendered to Buyer is the repair or replacement of the Good, or alternatively, at KIS's sole election, a refund of the purchase price of the Good. This remedies only will only be available to Buyer for one year after the Good is tendered to Buyer, and KIS's obligations under this section will be void unless Buyer provides KIS with notice of the defect in the Good within 30 days of discovery of the defect. Any Good returned to KIS for repair, replacement or refund under this section will be returned by Buyer in accordance with KIS's return material authorization procedures then in effect, Returns for a refund may be subject to restocking fees.

LIMITATION OF LIABILITY

21. **NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT WILL: (A) KIS BE LIABLE TO BUYER FOR ANY CIRCUMSTANTIAL, CONSEQUENTIAL, CONTINGENT, EXEMPLARY, INCIDENTAL, INDIRECT, LIQUIDATED, MATERIAL, PUNITIVE, SPECIAL, SPECULATIVE OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, SALES OR REVENUES, COST OF REPLACEMENT GOODS, LOST BUSINESS OR BUSINESS INTERRUPTIONS, OR ATTORNEYS FEES OR COURT COSTS ARISING IN ANY MANNER PURSUANT TO OR IN CONNECTION WITH THE AGREEMENT OR THE GOODS (EVEN IF KIS IS MADE AWARE OF THE POTENTIAL FOR SUCH DAMAGES); AND (B) KIS'S TOTAL LIABILITY RELATED TO ANY GOODS EXCEED THE PURCHASE PRICE OF SUCH GOODS.**

INDEMNIFICATION

22. Upon prompt notice by Buyer of any claim of U.S. patent, copyright, or trademark infringement with respect to any Goods, KIS will use its reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may customarily give with respect to such Goods. This section sets forth Buyer's sole and exclusive remedy against KIS regarding the infringement by any Goods of any third party intellectual property rights, including, without limitation, any patents or trademarks.

23. Buyer will indemnify, defend and hold harmless KIS, its shareholders, officers, directors, employees, agents and representatives from and against all losses, damages, liabilities, costs, and expenses including, but not limited to, property damage, loss of profits or revenue, loss of use of any property, cost of capital, cost of purchased or replacement power or temporary equipment, personal or bodily injury, or death ("Losses"), that may arise pursuant to or in connection with the Agreement or the Goods, regardless of whether such Losses are suffered directly by Buyer or arise pursuant to or in connection with a third-party suit, claim, counterclaim, demand, judgment or other action (each a "Claim") and regardless of whether or not KIS or any third-party is proportionately negligent with respect to such Losses and/or Claim. For the avoidance of doubt and without limitation, this indemnification obligation requires Buyer to pay any judgments against KIS or any other indemnified party resulting from any Claim, any court costs of KIS or any other indemnified party in connection with any Claim, and any reasonable attorneys' fees and disbursements incurred by KIS or any other indemnified party in KIS's defense of any Claim. KIS will have the sole and exclusive right to conduct the defense of any Claim at Buyer's sole and exclusive cost and expense. Buyer's indemnification obligation does not depend on the truth or accuracy of any allegations made against KIS, Buyer or any third party.

PRODUCT SUITABILITY

24. Because local safety standards and regulations may vary significantly, KIS cannot guarantee that the Goods meet all applicable requirements in each locality. Buyer assumes responsibility for compliance with such safety standards and regulations in the localities in which the Goods will be shipped, sold and used. Before purchase and use of any Goods, Buyer should review the product application, and national and local codes and regulations, and verify that the use and installation of the Goods will comply with them.

EXPORT CONTROLS; LAWS

25. Certain Goods may be subject to export controls under the laws, regulations and/or directives of the United States and various other countries. Buyer must comply with such laws and regulations and not export, re-export or transfer these Goods to any country to which such export, re-export, or transfer is forbidden or without first obtaining all required authorizations or licenses.

26. Buyer hereby warrants and represents that it will comply with any and all Laws with respect to the purchase, use, and operation of any and all Goods. For purposes hereof, "Laws" means any international, multinational, national, foreign, federal, state, municipal, local (or other political subdivision) or administrative laws, constitutions, statutes, codes, ordinances, rules, regulations, requirements, standards, policies or guidances having the force of law, treaties, judgments or orders of any kind or nature whatsoever, including, without limitation, any judgment or principle of common law.

INTERPRETATION OF THE AGREEMENT

27. None of KIS's or Buyer's shareholders, directors, officers, partners, managers, employees, agents or representatives have any authority to orally modify or alter in any way the terms and conditions of the Agreement. The terms, conditions, and limitations set forth in the Agreement can be modified, altered, or added to only by a subsequent written instrument signed by an authorized representative of KIS or by language included on the face hereof. Regardless of how many times Buyer purchases, or has purchased, Goods from KIS by whatever means, each time Buyer accepts the Agreement, Buyer and KIS enter into a separate agreement that will be interpreted without reference to any other agreement between Buyer and KIS, or what Buyer may claim to be a course of dealing or course of performance that has arisen between Buyer and KIS. No inconsistent usage of trade or industry custom, if any, prior to, contemporaneous with or subsequent to the making of the Agreement will waive, vary, serve to explain or serve to interpret any of the terms, conditions and limitations of the Agreement. The Agreement is the sole and exclusive agreement with respect to the matters discussed herein and the provision of Goods hereunder, (except for any contemporaneous writing agreed to in writing by KIS expressly modifying the terms and conditions hereof, which is hereby incorporated herein by reference and made a part hereof) and supersedes all prior and contemporaneous agreements and understandings, negotiations, inducements, representations or

conditions, whether oral or written, whether express or implied, with respect to such matters. Failure by KIS to enforce any of the terms, conditions and limitations of the Agreement will not constitute a waiver of those terms, conditions and limitations or a waiver of any other terms, conditions or limitations of the Agreement, and the failure of KIS to exercise any right (whether provided by the Agreement, law, equity, or otherwise) arising from Buyer's default under the Agreement will not constitute a waiver of that right or any other rights.

FORCE MAJEURE

28. KIS will not be liable for its failure to perform under the Agreement (including, without limitation, the failure to deliver any Goods) due to circumstances beyond its control, including, without limitation, fire, flood, earthquake, pestilence or similar catastrophe; war, act of terrorism, or strike; lack or failure of transportation facilities, shortage of suitable parts, materials or labor; any existing or future law, rule, regulation, decree, treaty, proclamation, or order of any governmental agency; inability to secure fuel, materials, supplies, equipment or power at reasonable prices or in sufficient amounts; act of God or the public enemy; or any other event or cause beyond KIS's reasonable control, including, without limitation, any delay caused by Buyer (each, a "Force Majeure Event"). If any Force Majeure Event prevents KIS's performance of any of its obligations under the Agreement, KIS will have the right to (a) change, terminate or cancel the Agreement, or (b) omit during the period of the Force Majeure Event all or any portion of the quantity of the Goods deliverable during that period, whereupon the total quantity deliverable under the Agreement will be reduced by the quantity omitted. If KIS is unable to supply the total demands for any Goods to be delivered under the Agreement due to a Force Majeure Event, KIS will have the right to allocate its available supply among its customers in whatever manner KIS deems to be fair and equitable. In no event will KIS be obligated to purchase materials from other than its regular sources of supply in order to enable it to supply Goods to Buyer under the Agreement. No change, cancellation or proration by KIS will be deemed to be a breach of any clause, provision, term, condition, or covenant of the Agreement.

CHOICE OF LAW; CHOICE OF VENUE

29. The negotiation, execution, performance, termination, interpretation and construction of the Agreement will be governed by the law of the State of Texas, except for Texas' choice of law rules, and expressly excluding the United Nations Convention on Contracts for the International Sale of Goods. If either KIS or Buyer brings a lawsuit or any other action arising out of the Agreement against the other party, such party must file its lawsuit or other action in a state or federal court located in Houston, Texas. KIS and Buyer expressly submit to the exclusive jurisdiction of those courts and consent to venue in those courts, and KIS and Buyer consent to extra-territorial service of process on KIS and Buyer. In the event of litigation pertaining to any matter covered by the Agreement, each of KIS and Buyer hereby agree to waive any right that it may have to a jury trial of any or all issues that may be raised in such litigation. Nothing contained in the Agreement will be construed to limit or waive any rights of KIS under applicable United States federal, state, or local laws. Any provision of the Agreement held to be invalid, illegal or unenforceable will be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof.

BINDING AUTHORITY

30. Any director, officer, employee, representative, or agent of Buyer signing or otherwise entering into this Agreement hereby represents and warrants that he or she is duly authorized to execute and enter into this Agreement on behalf of Buyer.