



TERMS AND CONDITIONS OF SALE

1. General

The Terms and Conditions of Sale outlined herein shall apply to the sale by KMT Waterjet Systems Inc. (hereinafter referred to as Company) of products, equipment and parts relating thereto (hereinafter referred to as Equipment). Unless prior written agreement is reached, it shall be understood that the Company's proceeding with any work shall be in accordance with the terms and conditions outlined herein.

The Company will comply with applicable laws and regulations in effect on the date of the Company's proposal as they may apply to the manufacture of the Equipment. Compliance with any local governmental laws or regulations relating to the location, use or operation of the Equipment, or its use in conjunction with other equipment, shall be the sole responsibility of the Purchaser.

2. Title and Risk of Loss

Title and risk of loss or damage to the Equipment shall pass to the Purchaser upon tender of delivery F.C.A. manufacturing facility unless otherwise agreed upon by the parties, except that a security interest in the Equipment shall remain in the Company, regardless of mode of attachment to realty or other property, until full payment has been made therefor. Purchaser agrees upon request to do all things and acts necessary to perfect and maintain said security interest and shall protect Company's interest by adequately insuring the Equipment against loss or damage from any cause wherein the Company shall be named as an additional insured.

3. Assignment

Neither party shall assign or transfer this contract without the prior written consent of the other party. The Company however shall be permitted to assign or transfer, without the prior written consent of the Purchaser, the Company's right to receive all or any portion of the payment due from the Purchaser under this contract.

4. Delivery and Delays

Delivery dates shall be interpreted as estimated and in no event shall dates be construed as falling within the meaning of "time is of the essence".

The Company shall not be liable for any loss or delay due to war, riots, fire, flood, strikes or other labor difficulty, acts of civil or military authority including governmental laws, orders, priorities or regulations, acts of the Purchaser, embargo, car shortage, damage or delay in transportation, inability to obtain necessary labor or materials from usual sources, faulty forgings or castings, or other causes beyond the reasonable control of the Company. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. The Purchaser's receipt of Equipment shall constitute a waiver of any claims for delay.

5. Taxes

The price does not include any present or future Federal, State, or local property, license, privilege, sales, use, excise, gross receipts or other like taxes or assessments which may be applicable to, measured by, imposed upon or result from this transaction or any services performed in connection therewith. Such taxes will be itemized separately to Purchaser, who shall make prompt payment to the Company. The Company will accept a valid exemption certificate from Purchaser, if applicable, if such exemption certificate is not recognized by the governmental taxing authority involved. Purchaser agrees to promptly reimburse the Company for any taxes covered by such exemption certificate which the Company is required to pay.

6. Set Offs

Neither Purchaser nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts which become payable to the Company under this contract or otherwise.

7. Patents

The Company shall defend any Suit or proceeding brought against the Purchaser and shall pay any adverse judgment entered therein so far as such suit or proceeding is based upon a claim that the use of the Equipment manufactured by the Company, and furnished under this contract constitutes infringement of any patent of the United States of America, providing the Company is promptly notified in writing and given authority, information and assistance for defense of same; and the Company shall, at its option, procure for the Purchaser the right to continue to use said Equipment, or to modify it so that it becomes non-infringing, or to replace the same with non-infringing equipment, or to remove said Equipment and to refund the purchase price. The foregoing shall not be construed to include any agreement by the Company to accept any liability whatsoever in respect to patents for inventions including more than the Equipment furnished hereunder, or in respect of patents for methods and processes to be carried out with the aid of said Equipment. The foregoing states the entire liability of the Company with regard to patent infringement.

8. Warranty

The Company warrants that the Equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for a period of twelve months from the date of placing the Equipment in operation or eighteen months from the date of shipment, whichever shall first occur.

The Purchaser shall be obligated to promptly report any failure to conform to this warranty, in writing to the company within said period, whereupon the Company shall, at its option, correct such nonconformity, by suitable repair to such Equipment or, furnish a replacement part F.O.B. point of shipment, provided the Purchaser has stored, installed, maintained and operated such Equipment in accordance with good industry practices and has complied with specific recommendations of the Company. Accessories or equipment furnished by the Company, but manufactured by others, shall carry whatever warranty the manufacturers have conveyed to the Company and which can be passed on to the Purchaser. The Company shall not be liable for any repairs, replacements, or adjustments to the Equipment or any costs of labor performed by the Purchaser or others without the Company's prior written approval.

The effects of corrosion, erosion and normal wear and tear are specifically excluded. Performance warranties are limited to those specifically stated within the Company's proposal. Unless responsibility for meeting such performance warranties are limited to specified shop or field tests, the Company's obligation shall be to correct in the manner and for the period of time provided above.

THE COMPANY MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, EXCEPT THAT OF TITLE, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

Correction by the Company of nonconformities whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of the Company for such nonconformities, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of such Equipment.

The Purchaser shall not operate Equipment which is considered to be defective, without first notifying the Company in writing of its intention to do so. Any such use of Equipment will be at the Purchaser's sole risk and liability.

9. Limitation of Liability

THE REMEDIES OF THE PURCHASER SET FORTH HEREIN ARE EXCLUSIVE, AND THE TOTAL LIABILITY OF THE COMPANY WITH RESPECT TO THIS CONTRACT OR THE EQUIPMENT AND SERVICES FURNISHED HEREUNDER, IN CONNECTION WITH THE PERFORMANCE OR BREACH THEREOF, OR FROM THE MANUFACTURE, SALE, DELIVERY, INSTALLATION, REPAIR OR TECHNICAL DIRECTION COVERED BY OR FURNISHED UNDER THIS CONTRACT, WHETHER BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE UNIT OF EQUIPMENT UPON WHICH SUCH LIABILITY IS BASED.

THE COMPANY AND ITS SUPPLIERS SHALL IN NO EVENT BE LIABLE TO THE PURCHASER. ANY SUCCESSORS IN INTEREST OR ANY BENEFICIARY OR ASSIGNEE OF THIS CONTRACT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS CONTRACT OR ANY BREACH THEREOF, OR ANY DEFECT IN, OR FAILURE OF, OR MALFUNCTION OF THE EQUIPMENT HEREUNDER, WHETHER BASED UPON LOSS OF USE, LOST PROFITS OR REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, LOSS BY REASON OF SHUT-DOWN OR NON-OPERATION, INCREASED EXPENSES OF OPERATION, COST OF PURCHASE OF REPLACEMENT POWER OR CLAIMS OF PURCHASER OR CUSTOMERS OF PURCHASER FOR SERVICE INTERRUPTION WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE.

10. Nuclear Liability

In the event that the Equipment sold hereunder is to be used in a nuclear facility, the Purchaser shall, prior to such use, arrange for insurance or governmental indemnity protecting the Company against liability and hereby releases and agrees to indemnify the Company and its suppliers for any nuclear damage, including loss of use, in any manner arising out of a nuclear incident, whether alleged to be due, in whole or in part to the negligence or otherwise of the Company or its suppliers.

11. Governing Law

The rights and obligations of the parties shall be governed by the laws of the State of Delaware excluding any conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement.

12. Export Control

The Company's products are U.S. origin items and subject to U.S. export control laws, including the Export Administration Regulations. Customer agrees that it will comply with U.S. export control laws and will not export, re-export, transfer, re-transfer, sell, re-sell, or otherwise divert Company products contrary to U.S. law. Customer further agrees that it will obtain all required export licenses.

13. Execution

The Company shall not be bound by any contract or any modification thereto until approved in writing by an officer of the Company. The contract, when so approved shall supersede all previous communications, either oral or written.