

# KSB, Inc. Terms and Conditions of Sale

## 1. General

The conditions of sale described in these terms (hereinafter the "Terms") apply to the sale by KSB, Inc. (hereinafter the "Seller" or the "Company") of equipment and parts (excluding consumables) (hereinafter the "Equipment"). Upon acceptance of these Terms by the purchaser (hereinafter the "Purchaser"), the terms and conditions hereof and any supplemental terms and conditions as agreed to in writing and signed by the parties constitute the entire agreement between the parties relating to terms of sale (the "Agreement"). Any different or additional terms and conditions in Purchaser's acknowledgement of this Agreement are not binding unless specifically accepted in writing by Seller. Notice is hereby given to Purchaser that Seller objects to any and all additional or differing terms that are not stated herein or separately agreed to in writing. Seller specifically objects to and rejects any pre-printed or boilerplate language included in footnotes that reference any different terms and conditions or pre-printed or boilerplate language included on the face of Purchaser's acknowledgment that reference any different terms and conditions. Notwithstanding anything herein to the contrary, Purchaser agrees that the version of these Terms then in effect that accompany each Seller proposal or bid will govern such transaction.

## 2. Title and Risk of Loss

(a) Title to Equipment. Title or partial title to Equipment shipped under any purchase order ("Order") passes to Purchaser upon the earliest to occur of (i) Delivery (as defined herein) of the Equipment or (ii) to the extent of payment of any portion of the Price for such Equipment by Purchaser; (b) Risk of Loss. Risk of loss or damage to the Equipment will pass to Purchaser upon Seller's tender of such Equipment to the carrier at the delivery location mutually agreed by the parties ("Delivery"). Unless otherwise stated on the face of a purchase order, risk of loss for the Equipment will pass to Purchaser after delivery to carrier at shipping point, FOB (Named Place by address). The latest Incoterms apply.

## 3. Delivery and Milestone Payments

Delivery dates for Equipment quoted by Seller are approximate and do not create a situation where "time is of the essence" unless Seller specifically agrees in writing to the contrary. Within ten (10) business days' of notice of readiness to ship from Seller, Purchaser shall complete all required inspections of Equipment, approvals of shop tests, or other items requiring Purchaser's acceptance prior to shipment. Purchaser shall provide Seller with a written release to ship notice within such ten (10) business day period. Notwithstanding, if such release to ship notice is not received by Seller within such ten (10) business day window, or if Purchaser delays shipment for any deliverable beyond the mutually agreed upon milestone due dates, Seller may ship and/or invoice for Equipment and materials as if such shipping release was received. Seller will invoice Purchaser according to the milestone schedule on the *earlier* of each scheduled shipping date(s) or *each* actual shipping date, at which time partial title, and risk of loss for Equipment transfers to Purchaser. In cases of delayed delivery due to or caused by Purchaser for any reason, including but not limited to Purchaser's credit status with Seller, or where Order does not provide a definitive *ship to* address, Seller at its option, may (i) *ship in place*; or (ii) ship Equipment FOB (named shipping point by address), and

charge Purchaser for storage of Equipment until Equipment is shipped at Purchaser's risk and expense to delivery point. Purchaser shall reimburse Seller for all costs incurred in connection with such delay in shipping, including but not limited to all costs of storage, maintenance and insurance, as well as any added costs for delayed shipping.

4. Force Majeure

The Parties understand that the full effects from the worldwide outbreak of the COVID-19 pandemic remain unknown at the time of preparing this bid or signing this order, and may directly or indirectly impact the supply of goods and performance of services and their respective delivery or performance dates. Accordingly, the Parties agree that any such consequences from COVID-19 or other such pandemics continue to be unpredictable, and such pandemic consequences generally constitute events of Force Majeure. Should such consequences be realized during the bid process or the life of the order that affect Seller's ability to deliver goods or perform services within the respective delivery or performance dates, Seller will issue a notice in accordance with the agreed provisions on Force Majeure and the respective consequences of Force Majeure shall apply.

Seller will not be liable for loss, damage, detention, or delay due to war, acts of terror or terrorism, riots, civil insurrection or acts of the common enemy, fire, flood, strikes or other labor difficulty, acts of civil or military authority including, without limitation, changes in governmental laws, orders, priorities or regulations including such acts that hinder Seller's performance due to tariff increases or other market changes, acts of Purchaser, embargo, car shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials or manufacturing facilities from unusual sources, or any other causes beyond the reasonable control of Seller, including but not limited to supply chain limitations from epidemics or pandemics such as COVID-19. 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 as may be necessary to properly reflect the delay. Purchaser's acceptance of Equipment will constitute a waiver of any claims for delay.

5. Price

Except as otherwise specifically quoted by Seller, Seller's prices are firm for thirty (30) days from date of quotation, after which Seller reserves the right to adjust all prices (i) applicable to Equipment not released to production within thirty (30) days of receipt of Purchaser's Order; and/or (ii) applicable to Equipment where Purchaser requests delivery other than within the quoted lead time.

6. Payments

The prices specified are in U.S. currency. Payment is due net thirty (30) days from date of invoice. Late fee of 1.5% per month or the highest rate allowed by law, whichever is lower, will be assessed on any unpaid balance. If Seller commences litigation or employs attorneys and/or a collection agency in order to secure payment of any sums due, Purchaser agrees to pay reasonable attorney's fee and/or collection fees in addition to

all other sums due. Seller shall invoice for and Purchaser agrees to pay pro rata payments for partial shipments. If delivery is prevented or postponed at Purchaser's request, or because of any other cause set forth specifically or by implication in Paragraph 3 above, then all dates of payment related to delivery will relate instead to the date of completion of manufacture. Storage of Equipment for any reason after readiness to ship will be at Purchaser's expense and risk. When in the opinion of Seller the financial condition of Purchaser renders it necessary, Seller may require cash payment or satisfactory security before shipment.

#### 7. Taxes and Fees

The price does not include any Federal, State or local property, license, privilege, sales, use, excise, tariff, gross receipts or other like taxes or fees which may be now or hereafter applicable to, measured by, or imposed upon or with respect to this transaction, the Equipment, its sale, its value, or its use, or any services performed in connection therewith. Purchaser agrees to accept any pass-through tariff increases imposed by law after the Effective Date of the Order.

Such taxes will be itemized separately to Purchaser, who will make prompt payment to Seller. If applicable, Purchaser shall provide a valid exemption certificate to Seller. If an exemption certificate previously accepted by Seller is not recognized by the governmental taxing authority involved, Purchaser agrees to promptly reimburse Seller for any taxes addressed by such exemption certificate which Seller nonetheless is required to pay.

#### 8. No Setoffs

Purchaser and Seller shall perform their obligations under this Agreement without setoff, deduction, recoupment or withholding of any kind for amounts owed to or payable by Seller, whether relating to Seller's or Seller's Affiliates' breach, bankruptcy or otherwise and whether under this Agreement, any Purchase Order, or any other agreement between (a) Purchaser or Purchaser's customer or any of its or their Affiliates and (b) Seller or any of its Affiliates, or otherwise.

#### 9. Cancellation

Seller and Purchaser may each terminate this Agreement for convenience at any time by providing and delivering at least four (4) weeks advance written notice of such termination to the other party without being obliged to give reasons for said termination. In cases of termination for Purchaser's convenience, Seller shall be entitled to payment of the contract price for all work performed or partly performed up to the date of Seller's receipt of written notice of termination as well as all costs incurred by Seller in connection with the termination (including any costs Seller reasonably incurred in the expectation of completing the whole order for the Equipment) and the costs of demobilization. Payment shall be calculated according to Seller's Cancellation Curve, attached hereto as Appendix A and incorporated by reference.

## 10. Warranty

Subject to the limitation of liability hereinafter set forth in Paragraph 11 or as otherwise described in the express terms of any separate written warranty issued by Seller for the Equipment, Seller warrants that the Equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for a period of twelve (12) months from the date of placing Equipment in operation or eighteen (18) months from the date of initial shipment, whichever shall occur first. If any Equipment shall fail to conform to this Warranty, Purchaser, using Seller's approved Warranty Claim form, shall deliver written claim of Warranty to Seller within thirty (30) days of discovery of such non-conformance (but in no event later than the aforementioned 12 month or 18 month period). Upon receipt of a provisional purchase order from Purchaser, KSB's Warranty Manager will deploy resources to validate such claim within a reasonable grace period of receipt of Purchaser's provisional purchase order. Purchaser agrees to provide documentation and data in support of its claim(s) as requested by KSB. Seller will correct such nonconformity, by suitable repair to such Equipment or, at Seller's option, by furnishing a replacement part FOB point of shipment, provided (i) Purchaser's account with Seller is current; Purchaser (ii) has included all cables with Equipment and cleaned observable environmental, biological or otherwise known hazardous materials from Equipment, to restore its "as shipped" condition prior to installation; (iii) has installed, maintained and operated such Equipment in accordance with good industry practices; and (iv) has complied with specific recommendations of Seller. The warranty period for repaired or replaced Equipment shall extend for a period of six (6) months beyond the date the repair or replacement work is completed or to the end of the original warranty period, whichever occurs later. Seller shall not be responsible for any *in and out* costs, and Purchaser shall be responsible for free and clear access. Accessories or equipment furnished by Seller but manufactured by others, will carry whatever warranty the manufacturers have conveyed to Seller and which can be passed on to Purchaser subject to the disclaimers by Seller expressly set forth in this Paragraph 10. Seller will not be liable for any repairs, replacements, or adjustments to the Equipment performed by Purchaser or any party hired by Purchaser, and only for any direct, out of pocket costs incurred by Purchaser to affect such repairs, replacements or adjustments to the Equipment, performed with Seller's prior written approval. Any such work on Equipment done by Purchaser or by third parties without pre-approval by Seller shall be at Purchaser's cost and expense and shall void Seller's Warranty under this Paragraph 10. At resolution of Purchaser's validated Warranty Claim, KSB's Warranty Manager will (i) void the provisional purchase order or (ii) adjust the provisional purchase order as needed to cover Seller's deployed resources, parts, supplies or materials outside the scope of Seller's warranty.

Seller's Warranty specifically excludes the effects of corrosion, erosion and normal wear and tear. Seller makes no performance warranty unless specifically stated within its proposal. In the event performance warranties are expressly included, Seller's sole obligation will be to correct in the manner and for the period of time provided above.

THE WARRANTIES MADE HEREIN BY SELLER ARE IN LIEU OF ANY AND ALL

OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED BY PURCHASER. SELLER DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. Limitation of Liability

Notwithstanding anything contained in this Agreement to the contrary, the liability of Seller hereunder, irrespective of the legal grounds (e.g. delay, breach, warranty, indemnity, torts) and including its agents, servants, subcontractors and suppliers, shall be limited as follows: Purchaser's remedies set forth herein are exclusive, and the total liability of Seller with respect to these conditions or the Equipment furnished hereunder, in connection with the performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or technical assistance covered by or furnished under this contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, will in no event exceed the purchase price of the component in the unit of equipment, material or part, or hourly rate for the affected services, upon which such liability is based.

IN NO EVENT SHALL SELLER BE LIABLE-WHETHER OR AS A RESULT OF BREACH OF CONTRACT OR WARRANTY OR BY WAY OF INDEMNITY OR OTHERWISE- FOR ANY LOSS OF REVENUE, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COSTS OF CAPITAL, COMMERCIAL LOSS, COSTS CONNECTED WITH THE INTERRUPTION OF OPERATION, OR ANY FURTHER SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGE.

However, this section shall not relieve Seller of its obligations under the Purchase Order to repair or replace its defective or deficient equipment under warranty, subject to the requirements of this Paragraph 11, in accordance with Seller's scope of supply.

12. Limitation upon Actions

Any lawsuit brought by Purchaser to enforce any claim or alleged claim against Seller under these conditions or with respect to the Equipment, to which these conditions relate, must be commenced within one (1) year after the alleged cause of action against Seller has accrued, notwithstanding a longer applicable statute of limitations under the law.

13. Amendments

No Sales Agent or Sales Representative or any other person is authorized to modify, extend or enlarge these Terms without the prior written consent of Seller.

Notwithstanding anything herein to the contrary, only written agreement signed by Purchaser and Seller will amend these Terms.

14. Governing Law

These Terms shall be construed in accordance with the laws of the Commonwealth of Virginia, and the respective rights and obligations of Purchaser and Seller will be

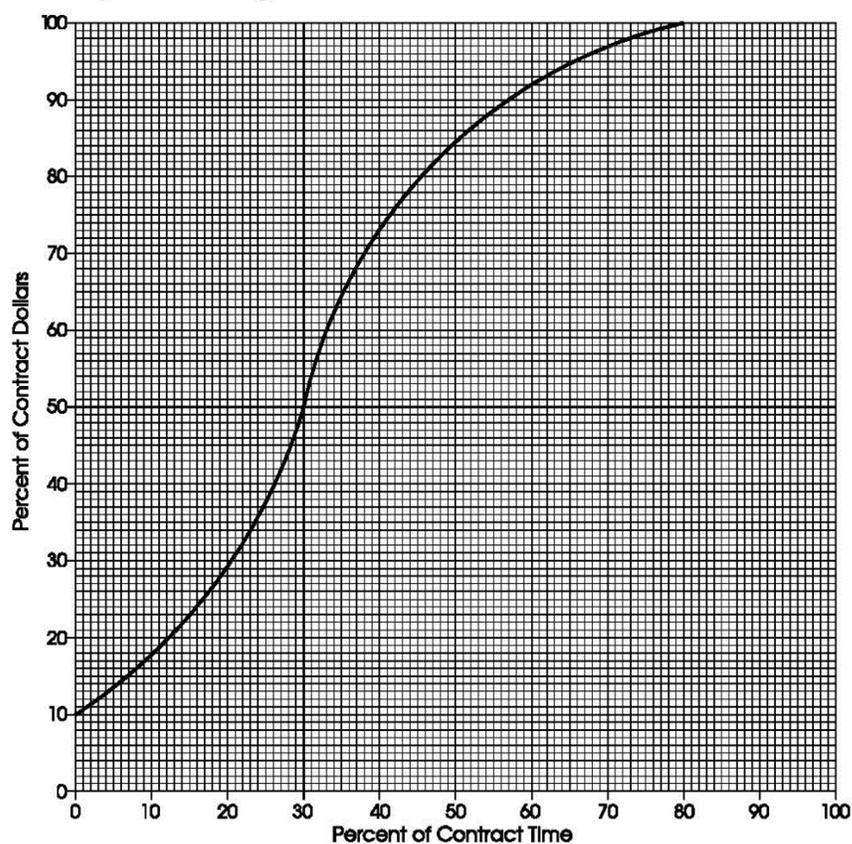
governed by the laws of the Commonwealth of Virginia. Any action or other proceeding brought by a party to this transaction arising from or related to Equipment, this transaction, or this Agreement shall be instituted solely in the Circuit Court of Henrico County, Virginia, or the United States District Court for the Eastern District of Virginia, Richmond Division. Seller, Purchaser and their lawful assigns agree to submit to the jurisdiction of these courts for such proceedings.

## Appendix A

### Order Cancellation Curve



In the event of any cancellation, the following pre-determined formula shall apply: Cancellation charges will be invoiced as determined and shall be paid Net 30 days after invoicing.



NOTE: The above graph shall be applied only to the services provided and goods manufactured or modified by the company. All other goods and services provided in a final condition (buyout items such as drivers, couplings, seals or instruments, etc.) shall be charged to the client at the sub-supplier's charge to the company plus 20% administration and handling charges.

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