

General Terms and Conditions of Sale

1. AGREEMENT

Kinetics Drive Solutions Inc., ("Seller" or "*Kinetics*") agrees to sell and Buyer agrees to purchase instruments, machinery, engineering services, testing services, parts or equipment described on the face of this Agreement and further described on Exhibit A, if necessary (collectively referred to as the "Goods") subject to the terms and conditions set forth herein.

2. BINDING TERMS

2.1 The terms and conditions set forth in this agreement and any exhibits (collectively the "Agreement") shall become binding on the parties by:

2.1.1 Seller's written acknowledgment of this order, 2.1.2 Signature of Buyer and Seller and this Agreement, or 2.1.3 Seller's delivery of the Goods, in whole or part.

2.2 The terms of this sale are expressly limited to the terms and conditions set forth herein. Any and all terms set forth on Buyer's purchase order or otherwise proposed by Buyer are hereby objected to and shall be void unless expressly agreed to in a writing signed by Seller.

3. DELIVERY, TITLE & RISK OF LOSS

3.1 Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Delivery shall be made and title and risk of loss shall pass to Buyer upon Seller placing the Goods with a carrier ex works point of shipment.

3.2 In the event Buyer requests changes in specifications after this Agreement has become binding, such changes shall become part of this Agreement only upon acceptance in writing by Seller in its sole discretion, whereupon delivery dates will be reasonably extended, Seller shall be compensated for all costs incurred in connection with such change and the price shall be adjusted to maintain Seller's anticipated profit margin.

4. INSTALLATION

4.1 The Goods shall be installed at the expense of the Buyer unless otherwise expressly stipulated herein. Upon request, Seller will provide a competent superintendent to supervise the setting up and/or starting of the Goods. The Buyer shall pay Seller for the service and said superintendent at the rate stipulated plus traveling and all proper expenses. The superintendent shall be considered an employee of Seller, but Seller shall not be liable to injury to persons or damage to property occurring in the course, or as a result of the superintendent's presence upon the premises of Buyer.

4.2 Seller shall not be liable for material and equipment or the acts of Buyer's employees, agents or contractors, nor has it any responsibility for the performance of Goods not set up or started under the supervision of its superintendent unless deficient performance is caused by defects independent of the installation and within the scope of the warranty set forth in section 5.

4.3 Seller assumes no responsibility for damages due to deterioration during periods of storage by the Buyer prior to installation and operation. If provided for in the proposal or for an extra charge, Seller will if notified prior to shipment that the Goods are to be stored, attempt to take steps to minimize the deterioration.

5. WARRANTY POLICY

Seller warrants all products manufactured by it to be free from defects in material and workmanship under normal operating conditions and proper application in accordance with the specifications for operation as described in the REQUIREMENTS, SPECIFICATION AND DATA SHEETS which accompanies such products or is specified and agreed to in writing, for the periods as specified below:

- A. All products excluding electronics, piston equipment, powerpacks and repaired/exchanged products: twenty-four (24) months after delivery date or twelve (12) months after the equipment is placed in service, whichever occurs first.
- B. Transmissions, piston equipment, electronics, proportional/servo valves and power packs, with prior technical application approval and all repaired/exchanged products: eighteen (18) months after delivery date or twelve (12) months after the equipment is placed in service, whichever occurs first.
- C. Seals and sealing materials: six (6) months after delivery date.
- D. Seller or customer supplied items *per original manufacturer's warranty policy*

Limitations on Warranty

THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Buyer's **sole and exclusive remedy** under this warranty shall be limited to the repair or exchange of warranted products at Seller's option ex works, Seller's factory, Langley BC Canada.

If the Buyer (as that term is hereafter defined) grants to an end-user any warranty, which is greater in scope, time period, or labor allowance than the warranty stated herein, Seller shall not be liable beyond this stated warranty. Except as otherwise provided under the **Warranty Processing Procedures** section of this warranty, equipment and accessories not of Seller's manufacture are warranted by the manufacturer thereof, as provided in Paragraph D above, and not by the Seller.

Special incidental, consequential or other damages are expressly excluded. In no event shall Seller be liable for consequential damages or contingent liabilities including, but not limited to, loss of life, personal injury, loss of crops, loss of business income, downtime costs and trade or other commercial loss arising out of the failure of the product. Seller shall in no event be liable for any sum in excess of the price received by it for the product for which liability is claimed or associated.

Warranty Processing Procedures:

No products shall be returned without prior authorization from Seller. Buyer shall prepay all transportation charges for the return of such products to Seller's factory or authorized factory service center. Seller will not accept any charges for labor and/or parts incidental to the removal and remounting of products repaired or replaced under this warranty.

The foregoing warranty does not cover conditions over which Seller has no control, including, without limitation, contamination, pressures in excess of recommended maximum, products damaged or subjected to voltage, humidity, or temperature outside of specified range, misapplication of products, accident, abuse or misuse after shipment from Seller's factory, products altered, disassembled or repaired by anyone other than Seller's personnel, authorized factory service center personnel or persons so designated in writing by the Seller's Service Department prior to commencement of said work.

Types of failures which are not attributable to defects in materials and/ or workmanship and which are not considered by Seller as part of its warranty include, but are not limited to the following:

- Damages due to deterioration during periods of storage by the Buyer prior to installation and

operation.

- Damage of any kind from erosive or corrosive action of any gases or liquids handled by the machinery.
- Lack of or incorrect type of hydraulic fluid.
- Contamination of the hydraulic fluid.
- Damage attributable to accident, abuse, neglect.
- Stripped splines or keyways on drive shaft.
- Incorrect mounting of external gears, pulleys, etc.
- Operating beyond the recommended maximum speeds, torques, pressures, temperatures, voltages, currents or humidity.
- Use of the product in a manner or purpose for which it was not designed or intended by Seller.
- Misalignment, incorrect wiring, or high vibration.
- Ordinary wear and tear.

Whenever possible, each provision of the foregoing warranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this warranty shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this warranty.

6. TAXES

In addition to any price specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale, use or delivery of the Goods or Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities.

7. DISCLOSURE OF INFORMATION

Any information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as proprietary or confidential unless expressly provided in a writing signed by Seller.

8. FORCE MAJEURE

8.1 Seller shall not be liable for delays or failures in delivery or performance due to acts of God, governmental authority or public enemy, fire, flood, strike, labor disturbance, epidemic, war, riot, civil disturbance, power failure, embargoes, shortages in materials, components or service, boycotts, transportation delays or any other cause beyond Seller's control.

8.2 In the event of such delay or failure, this Agreement shall not terminate, but the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

9. PATENTS

9.1 In the event the Goods are found to infringe any Canadian/U.S. patent, Seller shall at its option procure for the buyer the right to continue use, replace the Goods with non-infringing goods, modify the Goods so that they are non-infringing or upon return of the Goods to Seller, refund the purchase price less reasonable depreciation.

9.2 Seller makes no warranty with respect to and shall not be liable for, any infringement relating to or arising out of:

9.2.1 Goods manufactured to buyer's design or specifications.

9.2.2 Use of the Goods in conjunction with any other product not furnished by Seller or in a combination not furnished by Seller. With respect to any claimed infringements arising out of circumstances described in this Section 9.2. Buyer shall indemnify and defend Seller against any and all loss, damage, costs and expenses including reasonable attorney fees.

10. CANCELLATION AT DEFAULT OF BUYER

10.1 Seller may cancel this Agreement without liability effective upon written notice to Buyer, upon occurrence of any of the following Events of Default:

- 10.1.1 Buyer's failure to make timely payment of any sum owing to Seller under this Agreement or otherwise;
- 10.1.2 Buyer's failure to conduct its operation in the normal course of business (including the inability to meet obligations as they accrue);
- 10.1.3 Institution of any proceedings by or against Buyer under any bankruptcy, insolvency or similar law;
- 10.1.4 Appointment or application for a receiver for Buyer;
- 10.1.5 An assignment by Buyer for the benefit of creditors;
- 10.1.6 Failure of Buyer to furnish Seller with a written representation reaffirming Buyer's solvency (it being understood that this Agreement and Buyer's order hereunder constitute a representation by Buyer that it is solvent).
- 10.1.7 Failure of Buyer to maintain any insurance required under this Agreement; or
- 10.1.8 Failure of Buyer to maintain the Goods free and clear of any and all Liens of third parties prior to Buyer's payment of the full purchase price.

10.2 Upon cancellation, at Seller's option:

- 10.2.1 Buyer shall pay for all Goods delivered and for all Goods completed or in process pursuant to this Agreement;
- 10.2.2 With respect to all Goods for which Seller has not received full payment, Seller may stop delivery, retake (or retain) possession of the Goods wherever located (all without notice, demand or legal process) and retain, lease or resell (at public or private auction or otherwise) without accounting to Buyer, and any payments received by Seller from Buyer or otherwise may be retained as liquidated damages;
- 10.2.3 Seller may declare any outstanding balance immediately due and owing and collect same from Buyer without further notice or demand, together with interest at the maximum rate permitted by law;
- 10.2.4 Refuse to deliver except for cash payment for all Goods.

10.3 The rights of cancellation and remedies provided in this Section are cumulative and are in addition to any other rights and remedies of Seller in law or equity.

11. PAYMENTS

11.1 Except as otherwise specified by Seller in writing, as full or partial shipments are made to Buyer, pro rata payments shall become immediately due and payable upon delivery without set off and without further act or deed of Seller.

11.2 In the event Seller consents to delay shipments after completion of the Goods or any portion thereof, payment shall become due upon notice to Buyer that such Goods are ready for shipment and such Goods shall thereafter be held at Buyer's risk and expense.

11.3 Until receipt of payment in full, Seller shall retain a security interest in the Goods wherever located and upon Seller's request, Buyer shall, at its own cost and expense, perform all acts necessary to, perfect and protect Seller's interest, including but not limited to the filing of financing statements and maintaining property casualty insurance in forms, amounts and with insurers acceptable to Seller. Overdue amounts shall bear interest at the maximum rates permitted by law.

11.4 Unless otherwise specified,

- a) All payments will be in US currency.

- b) All prices for goods are fixed and payable by the Buyer to the Seller within 30 days of the invoice date;
- c) Late payments are subject to a late payment charge equal to the lesser of 1.5 percent per month or the maximum rate permitted by law.

12. LIMITATION OF LIABILITIES

12.1 In no event shall seller be liable (whether as a result of breach of contract or warranty, in tort or otherwise) for special or consequential damages, including but not limited to loss of use, data, business or income, damage to associated equipment, cost of substitute goods, facilities or services, downtime costs or claims of Buyers customers for such damages. In no event shall Seller's liability exceed the price of the Goods, which give rise to the claim.

12.2 Buyer agrees that if it transfers title to or leases the Goods to any third party Buyer shall obtain such party's agreement to the 'limitations of section 12.1.

12.3 Seller shall have no liability with respect to or arising out of information or advice furnished by Seller, which is not contractually required by this Agreement.

13. SOFTWARE LICENSE

In the event the Goods covered by this Agreement include or incorporate any Software or Licensed Program (as defined in Sellers Software License) then Buyer's rights with respect to such Software and Licensed Program shall be governed by the terms of the Software License.

14. EXPORT CONTROLS

Seller and Buyer acknowledge and agree that the Goods covered by this Agreement are subject to export controls imposed by the Canadian Defence Production Act under various laws including but not limited to the Controlled Goods Regulations, or any successor legislation, and the regulations promulgated thereunder. Buyer agrees not to knowingly export or re-export any Goods (including technologies) without complying with the Act. Buyer further certifies that the Goods: (a) are not intended to be used for any purpose prohibited by the Act or regulations including, without limitation, nuclear related activities or chemical/biological weapons or missiles; (b) are not intended to be released, shipped or exported, either directly or indirectly, to any other destination to which Canada has prohibited shipment. This Section shall survive any termination or expiration of this Agreement.

15. CANCELLATION BY BUYER

This Agreement may **NOT** be canceled by Buyer without the prior written consent of Seller, which consent may be granted or withheld in Seller's sole discretion. In the event of such cancellation, Buyer shall be liable for Seller's anticipated profit and for all costs incurred prior to cancellation.

16. MISCELLANEOUS

16.1 NOTICE

All notices provided in connection with this Agreement shall be in writing and shall be given by Federal Express (FedEx) or other reputable next day courier service or Canada Post mail, postage prepaid, certified or registered, return receipt requested. Each notice shall be addressed to the party at the address set forth on the face of this Agreement or at such other address as a party shall provide by notice to the other party. Notice shall be deemed effective upon delivery.

16.2 WAIVERS

No waiver shall be effective unless it is in writing. The failure of either party to require performance under any provision of this Agreement shall in no way affect the right of such party to require full performance at any subsequent time, nor shall the waiver by either party of a breach of any provision of this Agreement constitute a waiver of any succeeding breach of the same or any other provision.

16.3 SEVERABILITY

This Agreement shall be deemed severable and if any portion hereof shall be held to be invalid for any reason, the remainder shall not be deemed invalid but shall remain in full force and effect.

16.4 GOVERNING LAW/JURISDICTION

This Agreement shall be governed and construed in accordance with the laws of the British Columbia, Canada. The parties agree that all actions and proceedings in connection herewith shall be brought only in the federal or local courts within the Province of British Columbia and the parties hereby agree to submit to the jurisdiction of such courts for purposes of such actions.

16.5 MODIFICATION

This Agreement may not be amended, modified or supplemented at any time except by a writing signed by the parties.

16.6 ENTIRE AGREEMENT

This is the complete and final agreement between the parties related to the subject matter of this Agreement and supersedes all prior writings, conversations, understandings or agreements.

16.7 CREDIT

Seller reserves the right to grant, deny or stop advancing credit at any time in its sole discretion. Seller's credit policies are subject to change at any time without notice.

16.7a CREDIT INFORMATION

Buyer hereby consents to Seller giving or obtaining credit information to or from third parties regarding Buyer.

16.8 PARTIES IN INTEREST

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

16.9 ASSIGNMENT

Buyer shall not assign this Agreement without the prior written consent of Seller, which consent may be granted or withheld in the sole discretion of Seller.

16.10 ENFORCEMENT Buyer shall indemnify Seller against all costs and expenses (including attorney fees) reasonably incurred in the enforcement of this Agreement.

16.11 AUTHORITY TO ENTER INTO AGREEMENT

Each of the parties covenants and represents in respect of itself that it is authorized to enter into this Agreement and that in so doing it is not in violation of the terms or conditions of any contract or other agreement to which it may be a party.

16.12 SERVICE

All service provided by Seller is governed by the Seller's conditions for dispatching service personnel which are hereby incorporated by reference.

END