

## **STANDARD CONDITIONS OF PURCHASE**

### **1. General:**

This Order is placed subject to the Terms and Conditions included in this Order and reference to any proposal from the Seller is only for specifying basic information concerning price, the description of the item(s), quantities, terms of payment, and delivery, and then only as such terms are consistent with the terms and conditions herein.

All specifications, drawings and data submitted to the Seller by the Buyer in connection with the Order are incorporated and made a part of these terms and conditions.

Any of the Seller's Terms and Conditions which are in addition to, or are inconsistent with, these Terms and Conditions will be construed as proposals for addition to this Order and will not be binding unless specifically agreed to in writing by the Buyer.

Commencement of performance by the Seller in the absence of the Buyer's agreement to the Seller's proposals will constitute the Seller's acceptance of these Standard Terms and Conditions of Purchase.

### **2. Price:**

The Seller shall furnish the supplies and services called for by this order at the price or prices stated in this Order. Any increases or decreases in any stated price will only be reflected through an amendment to this Order.

If this Order is placed on an open price basis and in absence of subsequent agreement, then the price to the Buyer shall not be higher than the Seller's lowest prevailing price for the same or substantially similar supplies or services of comparable quantity in effect on the date of this Order.

### **3. Assignment:**

The Seller may not assign either its rights or obligations under this Order without the prior consent of the Buyer except claims for monies due or to become due under this Order may be assigned by the Seller provided that the Seller shall supply the Buyer promptly with two copies of any such assignment.

Payment to an assignee of any such claim shall be subject to set off or recoupment against any claim(s), which the Buyer may have against the Seller and a provision setting forth this right of the Buyer shall be included in each such assignment. The Buyer reserves the right to make direct settlements and/or adjustments in price to the Seller under the terms of this Order, notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to the assignee.

### **4. Subcontracts:**

To the extent that the Order includes services, in whole or in part produced according to the Buyer's drawings and/or specifications, any subcontracting of any part of those services by the Seller will require the Buyer's prior written consent and approval.

### **5. Facilities: Special Tools and Equipment:**

The Seller represents that it now has, or can readily obtain without assistance of the Buyer or the Canadian or U.S. Governments, as the case may be, all things necessary for the timely filling of this Order.

Unless Section 6 is applicable to certain Seller-acquired items, special tools and equipment (e.g. dies, patterns, jigs, molds, fixtures, etc.) used in manufacture of the articles herein ordered shall be furnished by,

and at the expense of, the Seller and shall be kept in good condition for follow-on orders, and when necessary, shall be replaced by Seller without expense to the Buyer.

**6. Titles, Risk and Insurance of the Work and Buyer's Property:**

Title to the product the subject matter of the Order, including any material, parts, work in process, or finished work, vests with the Buyer upon payment made to the Seller for that part of the Order, unless title to it has previously vested with the Buyer under the Order or other separate agreement. Payment by the Buyer to the Seller and vesting of title with the Buyer does not constitute acceptance by the Buyer of the materials, parts or work as being in conformity with the requirements of this Order.

The risk of loss or damage with respect to the deliverable materials, items, or parts which have been delivered to and accepted by the Buyer shall pass to the Buyer at such time as the Buyer assumes custody and possession of such deliverable items. All loss or damage to the deliverable items while in the possession of, or otherwise under the control of, the Seller shall be the responsibility of the Seller.

All materials (e.g. raw stock, components, etc.) special tools and equipment furnished by the Buyer to the Seller in connection with this Order shall remain the Buyer's property. In addition all special tools and equipment either:

identified as a reimbursable item in this Order, or

specifically acquired for performance of this Order with the cost being fully amortized or otherwise recovered in the price of the supplies to be delivered hereunder

shall upon payment become the Buyer's property.

All of the Buyer's property shall be:

used only in filling orders of the Buyer,

kept segregated and clearly marked as the Buyer's property,

maintained in good condition, normal wear and tear being accepted, and

surrendered to the Buyer upon demand.

The Seller shall not be responsible for replacing bailed materials satisfactorily accounted for in the manufacturing and assembly process however; the Seller shall maintain and/or replace special tools and equipment at no expense to the Buyer.

While Buyer-owned property of whatever kind is in the Seller's possession or control, the Seller shall be responsible for all loss or damage and shall, at its expense, secure and/or maintain extended insurance coverage in an amount sufficient to cover replacement cost, with the Buyer as a named insured.

**7. Inspection:**

All supplies and services ordered will be subject to final inspection and approval by the Buyer after delivery, notwithstanding prior payment, it being expressly agreed that payment shall not constitute final acceptance. The Buyer has Forty-Five (45) days from the date of receiving, within which it may reject and return any item which contains defective material or workmanship or otherwise does not conform to this Order, applicable drawings, specifications or samples.

Any item which has been rejected or required to be corrected shall be replaced or corrected by and at the expense of the Seller, promptly after notice, including transportation charges both ways and costs of inspection. Rejection within any warranty period, provided for in the Order, is reasonable notice to the Seller. If after being rejected by the Buyer, the Seller fails to promptly replace or correct any defective item within the delivery schedule, the Buyer may without further notice terminate the Order for default with no further liability or obligation to the Seller. Seller will reimburse the Buyer for all transportation and related costs in respect of the delivery of the rejected goods..

#### **8. Changes:**

By written Change Order, the Buyer may at any time unilaterally:

suspend the work in whole or in part for a stated time period, and

make changes in one or more of the following elements: designs, drawings or specifications, method of shipment or packing, place or time of delivery, or quantities to be furnished;

however, any acceleration in the delivery rate requires the Seller's advance consent.

If such suspension or change causes an increase or decrease in the cost of, or the time required for furnishing the work (whether supplies or services), an equitable adjustment shall be made in the Order price, delivery schedule, or both. If the price and/or schedule adjustment is not included in the issued Change Order, no increase in price or delay in delivery will be allowed unless the Seller asserts such a claim in writing within 2 (two) days from the date of the Change Order to be followed as soon as practicable with a specification of the claim along with supporting data.

Nothing contained in this Section shall relieve or excuse the Seller from proceeding without delay in performing this Order as changed.

The Buyer's engineering, technical and other personnel may on occasion render assistance, exchange information, or advice to the Seller's personnel concerning the supplies or services furnished hereunder. However, such assistance exchange, or advice shall not constitute either a change under this Section or a waiver of the Seller's existing obligations. In order to be valid and binding upon the Buyer, any change, waiver, or amendment to this Order must be in writing and issued by the Buyer's purchasing department.

#### **9. Termination:**

a) For Cause:

The Buyer reserves the right to terminate this Order, or any part hereof, and to cancel all or any part of the undelivered portion of this order if the Seller:

fails to deliver the supplies or perform the services by the time specified in this Order

fails to deliver supplies or perform services that meet the required specifications, or otherwise breaches any of the other terms of this Order, including the warranties, or

so fails to make progress in the work as to endanger performance.

The Buyer shall also have the right to terminate this Order or any part thereof, and cancel all or any part of the undelivered portion in the event of the happening of the insolvency of the Seller, or the filing of a

voluntary petition to have the Seller declared bankrupt provided it is not vacated within thirty days from the date of such filing or the execution by the Seller of any assignment for the benefit of creditors.

The Buyer shall have no obligation to the Seller in respect of the canceled portion of this Order and the Buyer's liability shall be limited to payment for the delivered portion of this Order at the rate specified on the face hereof (reflecting quantity prices as though this purchase Order had gone to full completion).

If as a result of default in performance by the Seller, this Order is terminated in whole or in part and it is necessary to procure any of the specified supplies or services elsewhere, then the Seller will be liable for any procurement charges which exceed the amount which would have been due to the Seller if it had satisfactorily completed this Order.

These remedies shall be cumulative and additional to any other or further remedies provided in law or in equity.

b) For Convenience:

The Buyer may, for its convenience, terminate work under this Order in whole or in part at any time by giving notice to the Seller in writing. The Seller shall be entitled to:

reimbursement for its actual costs incurred up to and including the date of termination, such costs to be determined in accordance with recognized accounting principles, and

a reasonable profit on the work done prior to termination at a rate not exceeding the rate used in establishing the original purchase price, provided, however, if it appears the Seller would have sustained a loss on the order, no profit shall be allowed and reimbursement of costs shall be adjusted to reflect the indicated rate of loss.

In no event shall the Buyer's obligations, as a consequence of the termination, exceed the Order price of the items terminated. At its election, the Buyer shall have the right to direct the disposition of any or all work-in-progress, parts and materials included in the Seller's reimbursed costs. The Seller shall comply with and be reimbursed for reasonable expenses incurred in effecting the Buyer's directions. Prior to settlement of the Seller's termination claim, the Seller shall make available for inspection:

all inventory included in the claim, and

all directly pertinent books, records and documents relating to claimed costs.

If after this Order has been totally or partially terminated by a "for cause" notice and it is determined that the Seller's failure is expected pursuant to Section 12 below, then such notice shall be deemed to have been issued "for convenience" and the rights of the parties shall be governed by paragraph 9 (b) above.

**10. Patents:**

The Seller agrees to save the Buyer, its customers, and agents harmless from any loss, damage, or liability incurred on account of any alleged infringement of any patent with respect to all supplies furnished under this Order provided that such supplies are not manufactured pursuant to the Buyer's design.

The Seller also agrees that it will, at its own expense, defend any action, suit, or claim in which infringement is alleged provided Seller is duly notified as to such suit.

In case a delivered item, or any part thereof, is held to constitute an infringement and the use of the item, or any part thereof is enjoined, the Seller shall at its own expense, either procure for the Buyer the right to continue using the item, or any part thereof, or replace same with a non-infringing item, or in the event of the impossibility of the foregoing options grant the Buyer a credit for the purchased price of such item. The Seller shall not be liable to the Buyer if any patent infringement or claim thereof is based upon the use of the item in combination with other materials where such infringement or claim thereof would not have occurred from the normal use for which the item was designed.

Where performance under this Order includes experimental, developmental, or research effort and such work is paid for in whole or in part as such by the Buyer, the Seller agrees to disclose to the Buyer all confidential processes, or know-how, or trade secrets resulting there from and, on request, to assign to the Buyer each invention and property right resulting there from.

**11. Warranties:**

The Seller warrants that it will have good title to the goods supplied under this Order and the goods shall be free of any liens and other encumbrances. The Seller further warrants that all supplies furnished under this order will:

be, or be made from, new or unused materials

be free from defects in materials and workmanship

conform to the applicable specifications, drawings, samples or other descriptions

be free from defects in design except to the degree such supplies are manufactured to the Buyer's design

be suitable for the intended purpose, if the purpose is made known to the Seller and the Buyer relies on the Seller's judgment and selection and

be free from defects in title.

The Seller further expressly warrants that all services performed under this Order will be free from defects in workmanship. These warranties shall remain in effect, as to each item furnished, serviced and/or repaired hereunder for a period of time equal to the earlier of twelve (12) months from the date of delivery and a period of time consistent with the warranty life normally offered by the Seller.

Where during the Warranty Period, the Articles or any part or unit thereof or the workmanship are found to be defective or malfunctioning, the Seller shall repair or replace the same ex-works within a Turn - Around Time of Forty-Five (45) days at the Seller's premises (hereinafter referred to as "the TAT"). The Articles or the Services or part or unit thereof so replaced or repaired shall then be subject to the warranty under this Clause for the balance of the Warranty Period outstanding at the time of written notification by the Buyer of the defect/malfunction and such balance of the Warranty Period shall begin to run only from the date of receipt by the Buyer.

All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive.

The benefits of this warranty shall accrue to the Buyer's customers and assigns to the same extent they shall accrue to the Buyer.

Articles ordered to Government specifications shall comply with such specifications as are current as the date of this Order unless otherwise particularly specified by the Buyer.

Under circumstances of Breach of Warranty, the Buyer shall be entitled to avail itself cumulatively of all remedies provided in law or in equity. The Seller shall make timely responses to the Buyer's notifications of Breach of Warranty and shall respond with the understanding (and the Seller agrees) that time will be of the essence in all instances.

#### **12. Excusable Delays:**

Except with respect to defaults by subcontractors, the Seller shall not be liable for failures or delays that arise out of causes beyond its control and without its fault or negligence.

If the failure or delay is caused by the default of a subcontractor at any tier, and it arises out of causes beyond the control of both the Seller and the Subcontractor, and without the fault or negligence of either of them, then the Seller shall not be liable to the Buyer unless the supplies or services to be furnished by the subcontractor are obtainable from other sources in sufficient time to permit the Seller to meet the Order requirements.

Excusable delays do not include a failure to perform by the Seller or its subcontractors occasioned by financial hardship.

In either circumstance as a precondition to being excused, the Seller shall give immediate written notice to the Buyer, setting forth the cause, when the Seller has reason to believe that deliveries will not meet the schedule.

In any event, if the excusable delay in delivery continues beyond a reasonable period of time, the Buyer may cancel this Order in which event neither party will have any further obligation or liability to the other.

The Buyer shall be excused for failures or delays due to causes beyond its control and without its fault or negligence.

#### **13. Liability for Injury:**

The Seller shall indemnify and hold the Buyer harmless against all loss and liability on account of claims of personal injury, death and property damages resulting from any act or omission of the Seller (including its agents, employees and subcontractors) in the course of performing this order, including the supplies delivered or services performed hereunder. The Seller shall maintain such Public Liability, Property Damage, Employer's Liability and Compensation Insurance as will protect the Seller and the Buyer from the aforementioned risk and from claims under applicable Workmen's Compensation statutes. Upon request the Seller shall provide the Buyer with certificates of insurance and evidence of registration under any applicable Workmen's Compensation statute.

#### **14. Advertising:**

Any advertising or notice of this Order (including the supplies or services hereunder and pictures, descriptions, or samples thereof) by the Seller is prohibited except with the Buyer's approval.

#### **15. Shipment:**

The Seller shall observe the "Ship Via" instruction on face of the Order. Failure to do so will constitute the Seller's acceptance of liability for any and all additional charges in addition to those which would have been incurred if specified routing had been followed.

All shipments shall be made "Not Insured". Failure to do so will constitute the Seller's acceptance of liability for any and all additional charges related to insurance.

Unless otherwise specified on the Order, packing will be in accordance with best commercial practices. The Buyer will not accept any additional charges for boxing, crating or cartage unless specified on the Order.

All packages, cases, bundles, etc., shall be marked with Order number and line number. A packing slip shall accompany each shipment.

All packing slips, invoices and waybills shall reference the Order number and/or the Buyer.

INCOTERMS (International Commercial Terms) apply.

#### **16. Invoices:**

Individual invoices must be issued for each shipment comprising a portion of this Order. Freight and other charges must be shown separately where applicable

Delay in receiving an invoice, invoicing for supplies shipped ahead of specified schedule or invoices rendered with errors and omissions will be considered just cause for the Buyer to withhold payment without losing discount privileges. Discount privileges will apply from date of scheduled delivery, the date of receipt of the supplies or services, or the date of invoice, whichever is later.

Invoices to be acceptable must:

- Be an original of the invoice. Facsimile copies are not acceptable for payment but may, however, be used to provide the Buyers accounting department with advanced notification of the submission of an invoice.
  - Be expressed in the currency indicated on the Order.
  - Identify the Buyer's Order number.
  - Be submitted directly to the Buyers accounting department by mail or courier not later than the day shipment is made, otherwise the Seller will be held responsible for storage or demurrage.

#### **17. Applicable Law and Attornment to Jurisdiction:**

This Order shall be construed in accordance with and governed by the laws of the Province of British Columbia, Canada, and constitutes the entire agreement between the Buyer and the Seller with respect to goods and/or services covered by this Order, The Supreme Court of British Columbia shall have exclusive jurisdiction to entertain any legal proceedings arising under this Order.

#### **18. Canadian Government Conditions:**

If the Buyer indicates on the face of this Order that the Buyer is making this purchase for the purpose of supplying goods and/or services under a contract with or for the Government of Canada or any department or agency thereof, this Order shall incorporate and give precedence to those General Conditions of the Canadian Government and the Buyer may terminate or cancel this Order by notice to the Seller, as regards all or any part of the goods and/or services that are offside the General Conditions governing the Buyer's said contract with or for the Government of Canada or a department or agency thereof.

**19. U.S. Government Conditions:**

If the Buyer indicates on the face of this Order that the Buyer is making this purchase for the purpose of supplying goods and/or services directly or indirectly to the U.S. Government or any department or agency thereof, Department of Defense Supplement Clauses (DFARS) or other special terms and conditions applicable to the Buyer under its prime contract shall be incorporated into this Order.

**20. Order of Precedence:**

The order of precedence for this Order shall be:

- First:* Purchase Order
- Second:* Buyer's drawings or specifications
- Third:* Seller's drawings or specifications.

**21. Specifications**

Seller may not substitute without permission from the Buyer. The Seller expressly warrants all articles and materials covered by this order to be of quality, quantity, size, description and dimension specified, and free from defects, including latent defects. Such warranty shall survive delivery, and shall not be deemed waived either by reason of our acceptance of said materials or articles or by payment from them.

The Seller guarantees that the net contents of items on this contract (order) are as specified, and labels conform to the Federal and Provincial regulations regarding weights.

**22. Confidential Information:**

This Order is confidential between Buyer and Seller. It is agreed that none of the details connected with the Order or information exchanged in the course of filling the Order, shall be published or disclosed, in any manner, to any third party without Buyer's approval.

**23. Typographical Errors:**

Mistakes in prices and discounts, also noticeable Discrepancies in quantities and sizes, are to be reported by the Seller immediately.

**24. Time of the Essence**

Time shall be of the essence and always remain of the essence unless expressly waived in writing, such waiver to contain the words "Time is no longer of the essence".

**25. Notices**

Notices may be sent by registered mail, fax or other electronic form to the addresses specified on the face of the Order, and will be effective on next business day with respect to notice by fax or other electronic form, and five business days if sent by registered mail.

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Any enquiries should be directed to Kinetics Drive Solutions Inc., Purchasing Department:

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