

1. CONTRACT BETWEEN KPM AND CUSTOMER

- 1.1 The Customer's order for the supply of the goods set out in the Order ("Goods") to be provided by Kawasaki Precision Machinery (UK) Limited (registered England and Wales with company number 2833215) ("KPM") under the Contract as set out in the specification of the Goods agreed in writing by KPM and the Customer ("Specification") in KPM's Quotation and agreed by the Customer in its written acceptance of KPM's Quotation constitutes an offer by the Customer ("Order") to purchase the Goods set out in the Order from KPM in accordance with these terms and conditions ("Conditions").
- 1.2 The Order shall only be deemed to be accepted when KPM issues written acceptance of the Order on which date ("Commencement Date") the contract between KPM and the Customer for the supply of goods in accordance with these Conditions shall come into existence ("Contract").
- 1.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of KPM which is not set out in the Contract.
- 1.4 These conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing unless other terms have been agreed between the two parties in writing, with references to these terms and conditions.
- 1.5 Any quotation given by KPM ("KPM's Quotation") shall not constitute an offer, and is only valid for the period of days specified in KPM's Quotation.

2. SUPPLY OF GOODS

- 2.1 The Goods are described in the Specification.
- 2.2 KPM reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 2.3 KPM shall either:
- Permit the Customer to collect the Goods from KPM's premises, as is agreed in writing between the parties (in each case, the "Delivery Location");
 - Deliver the Goods to the location set out in the Order (or such other location as the parties may agree at any time); or
- 2.4 Delivery of the Goods shall be completed as specifically set out in KPM's Contract.
- 2.5 Any dates quoted for delivery of the Goods are approximate only and subject to change, and the time of delivery is not of the essence.
- 2.6 If KPM fail to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. KPM shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide KPM with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 2.7 If the Customer fails to accept or take delivery of the Goods within fourteen (14) days of KPM notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by KPM's failure to comply with its obligations under the Contract in respect of the Goods:
- Delivery of the Goods shall be deemed to have been completed at 9.00 am on the business day following the day on which KPM notified the Customer that the Goods were ready; and
 - KPM shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 2.8 If sixty (60) days after KPM notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, KPM may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 2.9 KPM may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

3. QUALITY OF GOODS

- 3.1 KPM has agreed to provide the warranty for the Goods and for the period of time ("Warranty Period") as has been agreed in writing between the parties.
- 3.2 The Customer acknowledges that it has not relied on any express or (to the extent permitted by applicable law) implied statement, promise, representation, assurance or warranty which is not set out in the Contract.
- 3.3 Subject to condition 3.4 if:
- The Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty referred to in Condition 3.1;
 - KPM is given a reasonable opportunity of examining the Goods; and
 - The Customer (if asked to do so by KPM) returns the goods to KPM's place of business at the Customer's cost. Then KPM shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 3.4 KPM shall not be liable for the Good's failure comply with the warranty referred to in condition 3.1 if:
- The Customer makes any further use of the Goods after giving a notice in accordance with Condition 3.3;
 - The defect arises because the Customer failed to follow KPM's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods (if there are none) good trade practice;
 - The defect arises as a result of KPM following any drawing, design or specification supplied by the Customer;
 - The Customer alters, repairs or incorporates the Goods into other equipment Goods without the written consent of KPM;
 - The defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions; and/or
 - The Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 3.5 Except as provided in this Condition 3, KPM shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Condition 3.1.
- 3.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by KPM under condition 3.3.

4. TITLE AND RISK

- 4.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with Clause 2.
- 4.2 Title to the Goods shall not pass to the Customer until KPM has received payment in full (in cleared funds) for the Goods.
- 4.3 Until title to the Goods has passed to the Customer, the Customer shall:
- Hold the Goods on a fiduciary basis as KPM's bailee;
 - Store the Goods separately from all other Goods held by the Customer so that they remain readily identifiable as KPM's property;
 - Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on KPM's behalf from the date of delivery;
 - Notify KPM immediately if it becomes subject to any of the events listed in Clause 11;
 - Give KPM such information relating to the Goods in the ordinary course of its business.
- 4.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Condition Clause 11 or KPM reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy KPM may have, KPM may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
- Be responsible for and shall ensure that the terms of the Order and any Specifications submitted by the Customer are complete and accurate and shall notify KPM promptly of any errors or inaccuracies in the Order and/or any specifications;
 - Co-operate with KPM in all matters relating to the Services; and
 - Keep and maintain all materials, equipment, documents and other property of KPM ("KPM Materials") at the Customer's premises in safe custody at its own risk, maintain KPM Materials other than in accordance with KPM's written instruction or authorisation.

6. CHARGES AND PAYMENT

- 6.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in KPM's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, taxation, transport of the Goods, which shall be paid by the Customer when it pays for the Goods unless agreed in writing on separate terms and conditions.
- 6.2 KPM reserves the right to:
- Increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to KPM that is due to:
 - Any factor beyond the control of KPM (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - Any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - Any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give KPM adequate or accurate information or instructions in respect of the Goods
- 6.3 In respect of Goods, KPM shall invoice the Customer on or at any time after the completion of delivery.
- 6.4 The Customer shall pay each invoice submitted by KPM
- In accordance with the payment terms set out in the Order or where none are specified in the Order, within thirty (30) days of the invoice; and
 - In full and in cleared funds to a bank account nominated in writing by KPM,
- And time for payment shall be of the essence of the Contract.

- 6.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by KPM to the Customer, the Customer shall, on receipt of a valid VAT invoice from KPM, pay to KPM such additional amounts in respect of VAT as are chargeable on the supply of Goods at the same time as payment is due for the supply of Goods.
- 6.6 If the Customer fails to make any payment due to KPM under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of four per cent (4%) per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Customer shall pay the interest together with the overdue amount.
- 6.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. KPM may, without limiting its other rights or remedies, set off any amount owing to

it by the Customer against any amount payable by KPM to the Customer.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All third party patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights to use, and protect the confidentiality of confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar equivalent rights or forms of protection which subsist now or in the future in any part of the world ("Intellectual Property Rights") in or arising out of or in connection with the Goods shall be owned by KPM.
- 7.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Good, the Customer's use of any such Intellectual Property Rights is conditional on KPM obtaining a written licence from the relevant licensor on such terms as will entitle KPM to license such rights to the Customer.
- 7.3 All KPM Materials are the exclusive property of KPM.

8. CONFIDENTIALITY

- 8.1 Each party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are if a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its Services which the Receiving Party may obtain.
- 8.2 The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 8.3 This Confidentiality Condition (8) shall survive termination of the Contract.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude KPM's liability for:
- Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - Fraud or fraudulent misrepresentation;
 - Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - Breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - Defective products under the Consumer Protection Act 1987.
- 9.2 Subject to Condition 10.1:
- KPM shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising or in connection with the Contract; and
 - KPM's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Goods or Services the subject of the claim as the case may be.
- 9.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.4 This Condition 9 shall survive termination of the Contract.

10. TERMINATION

- 10.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than ninety (90) days written notice (or such other period of notice as may be agreed in writing by the parties from time to time).
- 10.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- The other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within thirty (30) days after receipt of notice in writing to do so;
 - The other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts or has no reasonable prospect of so doing;
 - The other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party; and/or
 - The other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 10.3 Without limiting its other rights or remedies, KPM may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason:
- The Customer shall immediately pay to KPM all of KPM's outstanding unpaid invoices and interest;
 - The Customer shall return all of KPM Materials which have not been fully paid for. If the Customer fails to do so, then KPM may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - The accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

11. FORCE MAJEURE

- 11.1 For the purposes of this Contract, "Force Majeure Event" means an event beyond the reasonable control of KPM or any other party, including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of KPM or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 11.2 KPM shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event or the Customer's failure to provide KPM with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 11.3 If the Force Majeure Event prevents KPM from providing any of the Goods for more than four (4) weeks, KPM shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

12. GENERAL

- 12.1 **Assignment:** KPM may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party. The Customer shall not, without the prior written consent of KPM, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.2 **Notices:** Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business or may be sent by email. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, at the time of sending (provided no notification of failed delivery is received by KPM). This Condition 12.2 shall not apply to the service of any proceedings or other documents in any legal action.
- 12.3 **Waiver and cumulative remedies:** A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 12.4 **Severance:** If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.5 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have the authority to act as agent for, or bind, to the other [arty in any way.
- 12.6 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.7 **Variation:** Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing by KPM (which may include variations agreed by email).
- 12.8 **Governing law and jurisdiction:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 12.9 **Interpretation:** In these Conditions, the following rules apply:
- A reference to a party includes its successors or permitted assigns
 - A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and
 - Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.