

## TERMS

1. **Applicable Terms.** This order may be accepted by Seller only in accordance with the terms hereof. Any acceptance herein of an offer of Seller, or any confirmation herein of a prior agreement between KapStone ("Buyer") and Seller is expressly made conditional on Seller's assent to the additional or different terms contained herein. This order may be accepted by Seller by commencement of work, shipment of goods, or furnishing the services hereunder. Dispatch of Seller's acknowledgment form or other written documentation will also act as an acceptance if it agrees with this order with respect to the description, amount, price and time of delivery of the goods or services ordered. Notwithstanding any waiver in any instance, or any oral agreement, or any instructions, terms and conditions that may be contained in any quotation, acknowledgment, invoice or other written document of Seller, in addition to, waiver for the future or modification of any of the provisions herein contained shall be of any force or effect unless made in writing and executed by Buyer.

2. **Acknowledgment and Shipment.** Seller shall acknowledge this order immediately advising Buyer of when shipment will be made and confirming method of shipment. Unless otherwise agreed, time is of the essence and immediate shipment is required. Notify at once of any delay. If an order does not meet Seller's minimum billing, Seller shall promptly notify Buyer, in which event Buyer reserves the right to either cancel or increase order.

3. **Delivery/Title.** Unless otherwise agreed, delivery shall be f.o.b. point of destination and the title shall pass to Buyer upon acceptance at the final delivery point. Risk of damages or loss following shipment and prior to acceptance by Buyer shall be the responsibility of the Seller or appointed designee.

4. **Packing Charges.** No charges for boxing, packing, or crating will be allowed unless agreed to in writing and signed by Buyer's authorized agent.

5. **Identifying Numbers.** Purchase order number and vendor number (and Buyer's stock number if shown on the order) must appear on all invoices, packages, packing slips or correspondence pertaining to this order.

6. **Bills of Lading and Shipping Memoranda.** All bills of lading and shipping memoranda must be mailed or electronically transmitted (fax or email) to destination of goods immediately upon shipment.

7. **Inspection, Return and Substitution.** Items purchased hereunder are subject to inspection and approval at Buyer's destination. Buyer reserves the right to reject and refuse acceptance of items which are not in full accordance with Buyer's instructions, specifications, drawings or designs, as the case may be. Items not accepted will be returned at Seller's expense. Payment for any item shall not be deemed an acceptance thereof. All substitutions must be agreed to, in writing, prior to shipment.

8. **Invoices.** Invoices submitted for payment shall contain the following information: (i) Order number, item number, Buyer's stock number, description of supplies or services, sizes, quantities, unit prices and extended totals; (ii) Bill of lading number and weight of shipment for shipments shipped f.o.b. shipping point. All invoices must be issued in the same unit of measure as shown on the purchase order.

9. **Discounts.** In connection with any discount offered for prompt payment, time for earning the discount will be computed from the latest of: (i) date of delivery of the supplies to the carrier (when acceptance is at shipping point); (ii) date of delivery at destination or port of embarkation (when delivery and acceptance are at either of these points); or (iii) date the correct invoice or voucher (in strict accordance with this order) is received in the office specified by buyer. For the purpose of earning any such discount, payment will be deemed to be made on the date of mailing of buyer's check.

10. **Changes.** Buyer may at any time, by written notice, make changes in: (i) drawings, designs, or specifications (where the items to be furnished are to be specially manufactured for Buyer in accordance therewith; (ii) method of shipment or packing; and (iii) time or place of delivery. If any such changes cause an increase or decrease in the cost of, or time required for, performance of this order, Seller shall advise Buyer of such increase or decrease. Buyer shall in turn advise Seller if it agrees that an adjustment will be made in the price or delivery schedule or both.

11. **Variation in Quantity.** No variation in the quantity of any item called for by this contract will be accepted unless agreed to in writing and signed by Buyer's authorized agent.

12. **Warranty.** The Seller warrants all items sold under this order to be free from defects in workmanship and material under normal use and service. In addition to any and all other remedies provided to Seller by law or equity, items found to be defective in workmanship or material after date of acceptance shall be repaired or replaced, at Buyer's option, at no charge to Buyer. All freight charges involving the shipment of defective items shall be for the Seller's account.

13. **Indemnification and Insurance.** If this order involves the purchase of services or goods with on-site labor, SELLER assumes the defense and the entire responsibility and liability for any and all damage or injury of any kind or nature whatever (including resulting death) to all persons, whether employed by the SELLER or otherwise, including, but not limited to, (a) employees and agents of subcontractors of SELLER or BUYER, or (b) any other third party, and to all property caused by, resulting from, arising out of, or occurring in connection with the performance by SELLER, or any subcontractor or agent of SELLER, of this Agreement regardless of cause or fault or negligence or alleged strict liability on the part of SELLER. In the event the liability of the SELLER shall arise by reason of the sole negligence of BUYER, then and only then, the SELLER shall not be liable under the provisions of this paragraph. IF any person makes a claim for any such damage or injury (including death resulting therefrom) as herein above described, the SELLER agrees to indemnify and save harmless the BUYER, its agents, servants and employees from and against any and all loss, damage, injury or expense including reasonable attorney's fees that the BUYER may sustain as a result of any such claims, and the SELLER agrees to assume, on behalf of the BUYER, the defense of any action at law or in equity, which may be brought against the BUYER upon such claim and to pay on behalf of the BUYER upon its demand, the amount of any judgment that may be entered against the BUYER in any such action. In any suit or claim by BUYER, SELLER, hereby expressly waives any immunity from suit by BUYER which might otherwise be conferred by the Workers' Compensation laws of any jurisdiction and which would preclude enforcement of the indemnification clause of the AGREEMENT by BUYER, and SELLER further agrees to pay any reasonable attorney's fees incurred by the BUYER in securing compliance with the provisions of this indemnification AGREEMENT.

Seller also agrees to maintain throughout the pendency of its activities on Buyer's premises a public liability insurance policy in an amount not less than \$1,000,000 per occurrence and to name Buyer as an additional insured under such policy. Seller will also carry workers' compensation insurance covering all of its employees. Seller will provide Buyer with a Certificate of Insurance evidencing all insurance required under the terms of this order.

14. **Right to Audit.** If this order involves services, repairs or materials which reflect a cost plus or unit pricing method of purchasing, all charges based on time, materials, or third party rentals, shall be subject to examination by Buyer, and Seller, upon request by Buyer, shall permit buyer to examine its books and records respecting all such charges.

15. **Termination.** Buyer, by written notice, may terminate this order, in whole or in part. In the event this order is terminated as a result of Seller's default, the Seller shall be liable for all damages allowed in law or equity, including the excess cost of re-procuring similar items. If this order is terminated for the convenience of Buyer, Seller will be compensated to the extent that items have been accepted by Buyer prior to the effective date of termination. Other than to this extent, buyer shall not be liable to Seller for any damages on account of its failure to accept all of the items ordered.

16. **Confidentiality/Trade Secrets.** All specifications, data and other information furnished by Buyer, or its agents, to Seller in connection with this order remain the exclusive intellectual property of buyer and shall be treated by the Seller as proprietary and shall not be disclosed or used, outside the limitation of this order, without prior written approval of the Buyer. In addition, the purchase of the Seller's product does not authorize the Seller to use the name of or make reference to Buyer for any purpose in any releases for public or private dissemination, nor shall the Seller divulge or use in any advertisement or publication any specifications, data, or other information pertaining to or relating to this usage without prior written approval of the Buyer.

17. **Infringements.** If suit is brought against Buyer alleging that the items as such or any parts or equipment covered by this order or their use as such constitute an infringement of any patent, trademark or other right of any third party, Seller shall defend Buyer and pay any awards against Buyer, including reasonable attorney's fees, for such infringement provided Buyer gives Seller prompt written notice and permits Seller to defend.

18. **Compliance with Laws.** All goods and services covered by this Order must be produced or performed in accordance with applicable local, state and federal laws, including those dealing with protection of the environment. All goods and services must bear the following legend? "We hereby certify that the goods/services covered by this invoice were produced in compliance with applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."

19. **OSHA.** Seller agrees to comply with the provisions of the Occupational Safety and Health Act of 1970 and the standards and regulations issued thereunder. Seller certifies that all items furnished and all work performed hereunder will comply with said standards and regulations. Seller further agrees to indemnify and hold harmless Buyer for any loss, damage, fine, penalty or any expense whatsoever as a result of Seller's failure to comply with the Act and any standards or regulations issued thereunder.

20. **Chemical Substances Identification.** By acceptance of this purchase order, the Seller certifies that any chemical substance(s) furnished pursuant to this order have been properly labeled and that proper information of the substance(s), e.g., material safety data sheets, have been provided to Buyer, pursuant to any federal, state or local legislation.

21. **Equal Employment Opportunity, Employment of Veterans and Individuals with Disabilities.** During the performance of this purchase order, unless exempt, the Seller agrees to abide by the provisions of 29 C.F.R. 470, 41 C.F.R. 60-1, 60-741 and 60-250 and these provisions are incorporated by reference herein.

22. **Special Provisions/Governing Law.** Special provisions typed or applied by rubber stamp hereon supersede any conflicting printed provisions. Unless otherwise agreed, this order shall be interpreted under laws of the State of Illinois, without recourse to conflict of law provisions.