



Purchasing Terms and Conditions for Kosmo Machine Inc. REV. 12/18

1. **PURCHASE ORDERS & CHANGE ORDERS.** Goods and/or services (“Goods” and/or “Services”) procured by Kosmo Machine Inc. (“Kosmo”) are subject to a written or electronic purchase order (each an “Order”) bearing a separate order number (“Order Number”). These Purchasing Terms and Conditions (“Terms and Conditions”) are incorporated into and made part of the Order as if set forth fully therein. If the Supplier identified in the Order is party to a formal supply agreement with Kosmo, then such agreement’s terms and conditions are incorporated herein by reference and will prevail to the extent such terms conflict with these Terms and Conditions. No statement or writing by Supplier, including but not limited to Supplier’s invoice, shall alter or supersede these Terms and Conditions. Any changes to an Order by Kosmo that may result in a change in pricing for any Good and/or Service shall be made by written change order, which when accepted shall be made part of the Order. Supplier shall include the Order Number on every packing list, invoice and every other communication related to the Order.
2. **INVOICES/PAYMENT.** Payment terms shall be as set forth in the Order. Supplier shall issue a separate invoice for each completed shipment and for each Order Number. Kosmo’s obligation to pay shall be subject to (a) its receipt and Acceptance of the Goods and/or Services as set forth herein and (b) timely receipt of a correct invoice. Invoices and Orders may be sent electronically, and any invoice or payment status questions may be emailed to payables@kosmomachine.com.
3. **PACKING AND SHIPPING.** Shipment or delivery shall be in accordance with the schedule set out in the Order and in exact quantities ordered. Time is of the essence. To the extent practical, Goods ordered under separate Order Numbers shall be segregated within the pallet, box or shipping container. Supplier shall include with each shipment a separate packing list for each Order and include on each list the correct Order Number. All Goods provided by Supplier (and items owned or provided by Kosmo for which Supplier is providing Services) must be properly prepared for shipment in an appropriate manner to prevent damage and to comply with carrier regulations and requirements; Supplier is responsible for replacement cost of damaged product. Supplier shall consolidate shipments to the extent practicable and shall at all times ship using lowest available transportation rates. Unless specifically stated in the Order, Kosmo will not pay for packing, crating, or cartage. Supplier, at its expense, shall bear the incremental cost of expediting shipments to meet schedule requirements or to mitigate time lost by failure to ship or deliver on schedule. Kosmo reserves the right, at Supplier’s expense, to return any Goods shipped in advance of the schedule set forth in the Order.
4. **ACCEPTANCE & REJECTION.** Goods and/or Services will be received subject to inspection and approval by Kosmo after delivery (“Acceptance”). Upon inspection, Kosmo may give Supplier notice of rejection or revocation of Acceptance notwithstanding any payment, approval, or inspection. No inspection, approval, delay or failure to inspect, or failure to discover any damage, defect or other non-conformance, will relieve Supplier of any obligations under the Order or limit, revoke or waive any right or remedy of Kosmo with respect to Supplier’s performance hereunder. If, in Kosmo’s judgment, the Goods and/or Services do not conform with the requirements or warranties set forth in the Order, Kosmo will have the right to reject the Goods and/or Services and, in addition to any other rights or remedies it may have, Kosmo may, in its sole discretion, (a) seek reimbursement, credit, replacement, or repair as Kosmo may direct; or (b) correct, rework, and/or repair the Goods and/or Services with all costs associated therewith to be charged to and paid by Supplier. All such non-conforming Goods and/or Services that are so remedied will have the same warranty as stated in these Terms and Conditions from the date of re-delivery.
5. **EXCESS GOODS.** Except for customary quantity variations recognized by trade practice, Goods in excess of those specified in the Order will not be Accepted, and such Goods will be held at Supplier’s risk. Kosmo shall have no obligation to keep or preserve any excess Goods delivered by Supplier. Kosmo may, and at Supplier’s request shall, return the excess Goods at Supplier’s risk, and all transportation charges, both to and from the original destination, shall be paid by Supplier.
6. **REPRESENTATIONS AND WARRANTIES.** Supplier expressly warrants that all Goods covered by the Order conform to the standards, specifications, drawings, samples, models or other description furnished or expressly adopted by Kosmo, and will be of good material and workmanship, and free from defects, including defect in design (if Supplier’s design) and, if custom-designed by Supplier for the application specified by Kosmo, be comparable in quality to similar custom-designed Goods sold for similar applications, and if the Goods are not ordered to

Kosmo's specifications, Supplier further warrants that they will be of merchantable quality and fit and sufficient for the purpose intended. Supplier further warrants that the Goods will conform to all operational and functional capabilities and features as set forth in the specifications provided by Kosmo and will be free of defects that affect the performance of such features. Supplier further represents and warrants that any Services provided pursuant to the Order shall be performed in a good and workmanlike manner by qualified, trained personnel, free from errors and conform to the specifications provided pursuant to the Order. In addition, Supplier represents and warrants; (a) that Supplier is authorized to enter this Order and shall obtain any and all permits, licenses or other rights necessary to perform its obligations hereunder; (b) that in performing hereunder, Supplier shall follow all federal, state and local laws; (c) that any Goods, software, documents or other materials provided to Kosmo hereunder shall not infringe upon the copyright, patent or other rights of any third party; and (d) that Supplier has good title to the Goods and that the Goods are conveyed free of liens or other encumbrances. Supplier's warranties shall be enforceable by Kosmo and shall run to Kosmo's customer(s).

7. **DEFECTIVE GOODS.** If any of the Goods and/or Services fail to meet the warranties contained in these Terms and Conditions (a "Nonconformity"), Supplier shall, upon notice from Kosmo, promptly correct or replace those Goods or correct such Services at Supplier's expense. Supplier hereby waives any right to assert that Kosmo is barred from a remedy due to any failure or delay by Kosmo in providing notice under U.C.C. 2-607(3)(a). If Supplier shall fail to adequately address the Nonconformity, then Supplier shall reimburse Kosmo for all costs to correct or replace the Nonconformity in the Goods and/or Services. If Supplier fails to do so, Kosmo may cancel this Order as to all such Goods and/or Services, and in addition, may cancel the then remaining balance of this Order. After notice to Supplier, all such Goods will be held at Supplier's risk. Kosmo may, and at Supplier's direction shall, return such Goods to Supplier at Supplier's risk, and all transportation charges, both to and from the original destination, shall be paid by Supplier. Any payment for such Goods and/or Services shall be refunded by Supplier unless Supplier promptly corrects or replaces the same at its expense. If any field problem occurs as a result of a Nonconformity in the Goods and/or Services that (a) causes Kosmo to breach an agreement with a third party or other liability, (b) threatens Kosmo's reputation, or (c) poses a previously unforeseen safety hazard, Supplier shall pay forthwith to Kosmo all costs and expenses, including, without limitation, labor, travel and product costs incurred by Kosmo in taking such corrective action.
8. **RISK OF LOSS.** Unless otherwise provided in the Order, Supplier, upon delivery to it or manufacture or acquisition by it of any materials, the title to which remains with Kosmo, assumes the risk of and shall be responsible for any loss or damage to such materials. Risk of loss of any Goods provided by Supplier hereunder shall pass to Kosmo only upon Acceptance.
9. **INDEMNITY.** Supplier expressly agrees to defend, indemnify and hold harmless Kosmo, its directors, officers, employees, agents, representatives, successors and assigns against any losses, fines, damages or other penalties or charges, including attorney fees and any costs that may arise directly or indirectly from (a) the breach of this Order and/or any of the representations or warranties contained in this Order by Supplier or its employee(s), agent(s), or representatives; or (b) the negligence or willful misconduct of Supplier or its employee(s), agent(s), or representative(s).
10. **INSURANCE.** Supplier shall at its expense keep in force during the pendency of this Order commercial general liability insurance to insure Kosmo against any liability arising out of this Order. Such insurance shall be in an amount of not less than \$1,000,000 combined single limit for property damage and bodily injury for each accident or occurrence. In addition, Supplier shall keep at its expense automobile liability coverage for all vehicles involved in the performance of our duties hereunder in a face amount of at least \$1,000,000 combined single limit for property damage and bodily injury for each accident or occurrence. Kosmo shall be an additional named insured under such insurance. Supplier shall, at its expense, keep in force during the pendency of this Order statutory workers' compensation insurance as prescribed by the law of the state in which the work or services is performed and Section B, Part 2 employer's liability coverage with limits of at least \$100,000. Insurance required hereunder shall be obtained from companies rated A or better in "Best's Insurance Guide." Supplier shall provide Kosmo with a certificate of insurance evidencing such insurance. Kosmo reserves the right to require additional or different insurance coverage and shall provide Supplier with any such requirements in writing.
11. **COMPLIANCE.** If applicable: (1) Kosmo and Supplier shall abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), and any other similar applicable regulations that may be enacted from time to time. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. (2) This contractor and subcontractor shall abide by the requirements of 29 C.F.R. Part 471, Appendix A to Subpart A.

12. **TERMINATION.** Kosmo may terminate Order for its convenience at any time, in whole or in part, by written or electronic notice. If this Order is terminated for convenience, any claim of Supplier shall be settled on the basis of reasonable costs incurred by Supplier in the performance of this Order for labor and materials which are not usable by Supplier. Materials for which Supplier is reimbursed shall become the property of Kosmo and shall be surrendered to Kosmo upon termination of this Order. Supplier shall safeguard and shall not destroy such materials without Kosmo's consent. The foregoing states Kosmo's entire liability for termination, and in no event shall Kosmo be liable to Supplier for any consequential or special or other damages. Sections 3-9,12,13,14 and 15 shall survive expiration or earlier termination of this Order.
13. **SUBCONTRACTING AND ASSIGNMENT.** Supplier shall not assign this Order or any rights hereunder, nor delegate any duties, nor subcontract any work, without the prior written approval of Kosmo, which may be withheld in its sole and absolute discretion. Any subcontracts shall be subject to the terms and conditions of this Order. The price quoted by Supplier is deemed to include the price of any Goods and/or Services obtained from any subcontractor or supplier to Supplier, unless otherwise agreed in advance by Kosmo.
14. **RIGHT TO AUDIT CLAUSE.** Kosmo shall have the right to perform audits from time to time of Supplier's costs and other items related to the terms of this Order. Supplier shall, upon reasonable request and during reasonable business hours, make available for examination and reproduction by Kosmo and its duly authorized agents, such books, records, and invoices of Supplier as may be necessary to perform an audit pursuant to this Section. Such audits may be performed while this Order is in effect or within one year after its termination.
15. **MISCELLANEOUS.** This Order shall constitute the entire agreement between the parties with respect to the matters set forth herein. Notwithstanding the foregoing, nothing contained herein shall be construed to supersede or conflict with any nondisclosure or confidentiality agreement between the parties. Section headings are for convenience only and shall have no legal or interpretive effect. This Order shall be governed by and construed under the laws of the Commonwealth of Virginia, without regard to its choice of laws provisions. Any notices required hereunder shall be given in writing to the addresses set out in the Order. No waiver of any default by either party shall act as a waiver of a subsequent or different default. The parties hereby incorporate the requirements of 29 C.F.R. § 470, 41 C.F.R. §§ 60-1.4(a)(7), 60-250.05 and 60-741.5, if applicable.

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