



Sellers Terms and Conditions for Kosmo Machine Inc. (rev 08/01/2019)

- 1. CONTROLLING PROVISIONS:** No terms and conditions other than the terms and conditions contained herein shall be binding upon Kosmo Machine Inc. ("Kosmo") unless accepted by it in a writing signed by Kosmo. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Kosmo, whether or not they would materially alter this document, and Kosmo hereby objects thereto. All prior proposals, negotiations, and representations, if any, are merged herein. Buyer will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or services described herein are shipped or an invoice is presented in connection with the said goods and/or services.
- 2. PAYMENT TERMS:** Buyer agrees to pay for the products or services according to Kosmo's payment terms set forth in the Sales Order Acknowledgement. Buyer shall not offset any amounts or make any deductions to any payments unless authorized herein or authorized in writing by Kosmo. All past due amounts are subject to service charges at the maximum contract rate permitted by law. Buyer does hereby grant Kosmo a purchase money security interest in the products until such time as Kosmo is fully paid. Buyer will assist Kosmo in taking the necessary action to perfect and protect Kosmo's security interest. No products furnished by Kosmo shall become a fixture by reason of being attached to real estate.
- 3. SHIPMENTS:** Unless otherwise stated in the Sales Order Acknowledgement, all products are shipped F.O.B., point of shipment. Risk of loss shall transfer to Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier, whichever comes first. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. If Buyer causes or requests a shipment delay, or if Kosmo ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage and all other additional costs and risks shall be born solely by Buyer. Claims for products damaged or lost in transit should be made by Buyer to the carrier, as Kosmo's responsibility ceases upon tender of goods to Buyer, Buyer's representative or common carrier.

4. **DELIVERY:** Kosmo will make a good faith effort to complete delivery of the products or services as indicated by Kosmo in the Sales Order Acknowledgement, but Kosmo assumes no responsibility or liability and will accept no back charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Kosmo, including, but not limited to, liability for Kosmo's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the reasonable control of Kosmo. Under no circumstances shall Kosmo be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay. Products and materials held in inventory are subject to prior sale.

5. **INSPECTION AND ACCEPTANCE:** Claims for damage, shortage or errors in shipping must be reported within five (5) days following delivery to Buyer. Buyer shall have fifteen (15) days from the date Buyer receives any products to inspect such products and services for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Kosmo, in writing, of any defects, nonconformance or rejection of such products. After such fifteen (15) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such fifteen (15) day period is a reasonable amount of time for such inspection and revocation. Buyer shall have no right to order any change or modification to any product or service previously ordered by Buyer or its representatives or cancel any order without Kosmo's written consent and payment to Kosmo of all charges, expenses, commissions and reasonable profits owed to or incurred by Kosmo. The sole and exclusive remedy for merchandise alleged to be defective in workmanship or material will be the replacement of the merchandise subject to Kosmo's inspection.

6. **LIMITED WARRANTY:** Kosmo warrants that its products and services will conform to all specifications, drawings, samples, prototypes, or other descriptions provided or approved by Buyer in writing. Kosmo makes no warranty with regard to component parts that are manufactured by or materials or services provided by others and instead passes to Buyer (to the extent assignable) such warranties as may be provided by them to Kosmo. Kosmo makes no promise or representation that the products, materials or services will conform to any federal, state or local laws ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorized representative of Kosmo. Buyer shall be solely responsible for obtaining any permits and/or inspections required for the installation and/or use of the products. Kosmo does not provide, certify or otherwise warrant mechanical or structural designs. With respect to any property or materials provided to Kosmo for cleaning, testing or inspection, Kosmo makes no representations or warranties and accepts no liability arising out of the condition of such property or materials, the suitability of any inspection, testing or cleaning processes, or the property or material's capability to undergo inspection, testing or cleaning without being damaged by such processes.

7. **LIMITATION OF LIABILITY:** KOSMO MAKES NO OTHER EXPRESSED OR IMPLIED WARRANTIES. KOSMO HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL KOSMO BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE PRODUCTS FABRICATED OR PROVIDED BY KOSMO. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL KOSMO'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF PRODUCT(S) OR SERVICES THAT ARE NOT IN COMPLIANCE WITH THE SPECIFICATIONS PROVIDED OR APPROVED BY BUYER IN WRITING, WITH NO ADDITIONAL ALLOWANCE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR ANY RESULTING DAMAGE.
8. **INDEMNIFICATION:** Buyer shall defend, indemnify and hold harmless Kosmo and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the manufacturing, sale, transportation, installation, use, or repair of the products by Buyer or of the information, designs, services or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Kosmo, or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.
9. **REMEDIES OF KOSMO:** Upon default by Buyer, Buyer agrees to reimburse Kosmo all attorney fees and court costs incurred by Kosmo in connection therewith. Buyer agrees that any of the following shall constitute an event of default which shall enable Kosmo, at its option, to cancel any unexecuted portion of an order or to exercise any right or remedy which it may have by law: (a) the breach by Buyer of any term or condition contained herein; (b) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the appointment of receiver for Buyer or for the materials covered by this order or the filing of any petition to adjudicate Buyer bankrupt; or (c) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by Kosmo. All rights and remedies of Kosmo herein are in addition to, and shall not exclude, any rights or remedies that Kosmo may have by law. In the event it becomes necessary to incur any expense for collection of any overdue account, reasonable collection charges, including reasonable attorneys' fees, will be added to the balance due and Buyer shall pay all such charges.

10. **TAXES:** The amount of any sales, excise or other taxes, if any, applicable to the products or services shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Kosmo with an exemption certificate acceptable to the taxing authorities. Any taxes which Kosmo may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of Buyer, who shall promptly pay the amount thereof to Kosmo upon demand.

11. **SEVERABILITY:** These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force.

12. **NON-WAIVER:** Kosmo's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Kosmo's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by Kosmo.

13. **GOVERNING LAW:** This transaction shall be governed in all respects by the laws of the Commonwealth of Virginia, excluding its choice of law provisions. All actions, regardless of form, arising out of or related to this transaction or the products sold hereunder must be brought against Kosmo within the applicable statutory period, but in no event more than one (1) year after the date of Sales Order Acknowledgement.

14. **ENTIRE AGREEMENT:** This document constitutes the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a written modification signed by Kosmo. All transactions shall be governed solely by the terms and conditions contained herein.