

KENNEDY INDUSTRIES, INC. GENERAL TERMS & CONDITIONS

1. Conflicting Terms. These General Terms & Conditions, any corresponding quotation ("Quote") and Kennedy Industries, Inc.'s ("Kennedy") Repair Warranty constitute the entire agreement ("Agreement") relating to the sale of "Products" (which includes, but is not limited to, all components, controls, equipment, parts, products, materials and services) by Kennedy to Buyer. Any terms and conditions contained in Buyer's purchase order, request for quotation or any other document generated by Buyer which are different from, in addition to, or vary in any way from this Agreement shall not be binding upon Kennedy unless agreed to in a separate, issue-specific, written agreement signed by a corporate officer of Kennedy.

2. Delivery. Delivery terms are F.O.B. Kennedy's factory in Wixom, MI. For standard Products, dates of delivery are determined from the date of Kennedy's acceptance of any order by Buyer and are only estimates and not a guaranty of a particular date of delivery. For custom manufactured Products, dates of delivery are estimates based upon the date that such Products are approved and released for manufacture. If delivery is deferred at Buyer's request, payment of the contract price shall become due when Buyer is notified that Products are ready for pickup/shipment. Kennedy is not responsible for damage or loss in transit. All risk of loss or damage to the Products passes to Buyer as the Products are loaded onto the carrier. Buyer must obtain adequate insurance to cover the Products from the time risk of loss has passed from Kennedy.

3. Inspection. Buyer shall notify Kennedy within 48 hours of delivery of any damage to the Products or of any other complaint whatsoever Buyer may have concerning delivery. Buyer shall also note any damage on delivery tickets and shipping receipts at the time of delivery. The failure of Buyer to make such timely complaints and note any damage shall be deemed an acceptance of the Products and a waiver of any claims concerning delivery.

4. Delays. Kennedy shall not be responsible for delays caused by acts or omissions of Buyer, its employees, agents, suppliers or vendors, acts of God, inclement weather, strikes, lockouts, boycotts, or other labor union activities, extra work ordered by Buyer, acts of public enemy, war, terrorism, riots or civil commotion, inability to secure materials through regular recognized channels, imposition of government priority or allocation of materials, failure of Buyer to make payment when due, delays caused by inspections, changes ordered by inspectors, or other causes beyond Kennedy's reasonable control.

5. Change of Law or Regulations. Any change of laws, regulations or another governmental requirement which causes an increase in the cost of producing or delivering the Products or which occurs after Kennedy accepts an order, is not in the price. Any new or additional tariffs, duties or surcharges are not included in the price of the Products and are the responsibility of the Buyer. Kennedy reserves the right to require that the Buyer pays for any new or increased tariff, duty or surcharge prior to the delivery of the Products. Buyer assumes the risk of changes in the law, regulation or other governmental requirements; Kennedy does not assume the risk of new or higher tariffs, duties or surcharges.

6. Cancellation. Buyer may only cancel an order with the written consent of Kennedy and at Kennedy's sole discretion. If such consent is granted by Kennedy, Buyer shall pay Kennedy for (A) all restocking, reshipping and return charges which may be incurred, (B) the actual cost of any components, equipment, parts or materials, if such components, equipment, parts or materials were made to order or otherwise customized for Buyer for the order, or cannot be returned, and (C) all services and work performed by Kennedy as of the date on which cancellation is approved. Kennedy shall have the absolute right in its sole discretion to cancel this Agreement without penalty upon a breach thereof by Buyer, Buyer's failure to timely make any payment required by this Agreement, the pending or actual insolvency or bankruptcy of the Buyer, if it determines that any errors in estimating or design have been made, or if any unforeseen hazards or conditions arise or are discovered, or for any other reason whatsoever.

7. Returns. Buyer may only return Products with the prior written consent of Kennedy, at Kennedy's sole discretion. Kennedy accepts no responsibility for Products returned without prior written authorization. Products must be returned in saleable condition within 30 days from the date of invoice. Products will not be accepted for return if they are damaged or used, custom manufactured for the Buyer, not in their original packaging (unopened), not purchased from Kennedy or otherwise incapable of being resold by Kennedy. When Products are authorized to be returned for any reason other than pursuant to Kennedy's Repair Warranty, the amount of credit may be subject to a restocking charge. Returned Products must be sent freight prepaid to the appropriate address indicated by Kennedy. Any unauthorized returned Product will be returned at Buyer's expense. If a Product is returned without such consent, it shall thereupon become the

property of Kennedy.

8. Payment. Unless otherwise agreed to in writing, terms of payment are Net 30 days from the date of invoice with 1.5% per month additional charge on the unpaid balance, subject to acceptance by our credit department. No provision for retainage is included in Kennedy's Quote. Buyer agrees to pay Kennedy's actual costs, expenses and attorneys' fees incurred in collecting any past due and unpaid account balances.

9. Title and Lien Rights. Products delivered to Buyer will remain personal property, regardless of how they are installed or affixed to any realty or structure. After delivery to Buyer, Kennedy will have all such rights, including security interests and liens, in the equipment as lawfully may be conferred upon Kennedy by contract under any applicable provision of law. To secure payment, Buyer grants to Kennedy a security interest in the Products until they are paid for in full. Buyer agrees to cooperate fully with Seller in the filing of any UCC financing statements or other documents necessary to perfect such security interests and liens. If Buyer defaults in its obligations before the Products have been fully paid for, Kennedy may take any actions permitted by law to protect its interests including, where permissible, repossession of the Products.

10. Responsibility. It is Buyer's sole responsibility to insure that all Products related to this sale are compatible and compliant with Buyer's systems. Kennedy is not responsible for insuring system compatibility or compliance of any Products unless expressly stated otherwise in the Quote or agreed to in a separate, issue-specific, written agreement signed by a corporate officer of Kennedy.

11. Warranty. Kennedy's Repair Warranty, incorporated herein by reference, sets forth all warranty obligations, rights, and limitations of Buyer and Kennedy.

12. LIMITATION OF LIABILITY. KENNEDY'S RESPONSIBILITY OR LIABILITY FOR DEFECTIVE PRODUCTS/SERVICES, BREACHES OF CONTRACT OR ANY OTHER CLAIMS WHATSOEVER IS STRICTLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCTS/SERVICES OR THE PURCHASE PRICE OF SUCH PRODUCTS/SERVICES, AND NO OTHER CLAIMS OR DEMANDS WHATSOEVER SHALL BE IMPOSED ON KENNEDY, IRRESPECTIVE OF FAULT. ALL CLAIMS FOR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY AND SPECIAL DAMAGES, AS WELL AS BUSINESS INTERRUPTION AND COVER COSTS, ARE EXPRESSLY WAIVED BY BUYER.

13. Indemnification. To the maximum extent allowed by law, Buyer must defend and indemnify Kennedy and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including attorneys' fees) that Kennedy may incur or be obligated to pay as a result of (A) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; (B) any infringement or alleged infringement of the industrial and intellectual property rights of others arising from Buyer's plans, specifications (including Buyer's trademarks and brand names) or production of the Products ordered by Buyer; (C) Buyer's violation or alleged violation of any federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing safety, labeling, packaging and labor practices; (D) Buyer's breach of the Agreement, and (E) Buyer's breach of any of the terms, conditions and requirements of the manufacturer of any components, controls, parts, products or materials.

14. Intellectual Property. All creations of Kennedy related its work and services which are or may become legally protectable or recognized as forms of intellectual property rights, including all works, whether registerable or not, in which copyright, design right or any form of intellectual property rights may exist, including, but not limited to all artistic expressions, innovations, inventions, improvements, literary works, marks, grants, designs, processes, methods, formulas, techniques, videotapes, audiotapes and computer programs, (all collectively referred to as "Intellectual Property"), which Kennedy either solely or jointly with Buyer conceives, makes or reduces to practice, are the absolute and sole property of Kennedy. No right, title or interest in such Intellectual Property are conveyed to Buyer unless agreed to in a separate, issue-specific, written agreement signed by a corporate officer of Kennedy.

15. Disputes. This Agreement shall be governed by Michigan law and each provision herein must be interpreted in a manner which is valid thereunder. Unless Kennedy elects arbitration below, the Oakland County Circuit Court of the State of Michigan shall be the court of exclusive jurisdiction and venue over any disputes arising out of this Agreement, any such disputes must be commenced and maintained in the said Circuit Court, and Buyer expressly waives any right of removal to federal court pursuant to 28 U.S.C.

§1441. Buyer further waives and agrees not to assert as a defense in any action, suit or proceeding relating to this Agreement any claim that (A) Buyer is not personally subject to the jurisdiction of the state and federal courts of Michigan; (B) the venue of the action, suit or proceeding is improper, (C) the action, suit or proceeding is brought in an inconvenient forum, or (D) that the subject matter of this Agreement may not be enforced in or by the state or federal courts of the state of Michigan. Kennedy may at its sole discretion elect to submit all disputes related to this Agreement to binding arbitration, administered by the Southfield, Michigan office of the American Arbitration Association under its Construction Industry Arbitration Rules, and heard by a single arbitrator. An award rendered by such arbitrator shall be binding upon the parties and judgment on such award may be entered by any court of competent jurisdiction in the State of Michigan as the exclusive courts of competent jurisdiction. This section shall not prohibit either party from seeking appropriate injunctive relief in the Michigan Circuit Courts.

16. Photographs. Kennedy may photograph areas where its work is being performed and use same for advertising or promotional purposes.

17. Non-Solicitation. Buyer shall not recruit, hire, employ, contract or deal directly with any of Kennedy's employees, subcontractors or suppliers while Kennedy is performing its work or for a period of 12 months after the termination of the Agreement or conclusion of Kennedy's work without the prior written approval of Kennedy.

18. Taxes. All applicable federal, state or local sales, use, or excise taxes, and any tariffs, duties or surcharges which may be assessed are the sole responsibility of the Buyer and shall be in addition to the price or prices stated on the Quote and/or invoice unless otherwise stated. Kennedy shall have the right to add to the price of the Products invoice separately any such tax, tariff, duty or surcharge as may be imposed.

19. Successors and Assigns. This Agreement binds and inures to the benefit of Buyer and Kennedy and their respective successors and permitted assigns. Buyer may not assign any interest in, nor delegate any obligations or rights under this Agreement, without Kennedy's prior written consent.

20. Notices. Any notice or other communication regarding this Agreement must be in writing and delivered both by email and in one of the following manners: (A) personally delivered, (B) transmitted by facsimile (with a receipt acknowledgment), (C) transmitted by a recognized courier service, or (D) mailed in registered or certified form, to the last known business address of the party to which notice or communication is being given.

21. Waiver. The waiver by Kennedy of any breach by Buyer of any provision of this Agreement may not be construed to be either a waiver of the provision itself or to the subsequent application or any other provision of this Agreement.

22. Severability. If any provision of this Agreement is held by a court to be invalid, the remaining provisions shall continue in full force and effect without being invalidated. If any provision is modified by a court, it shall be modified so as to carry out the intent of this Agreement, and any provisions so modified shall be fully enforced as modified.

23. Survival. The provisions of this Agreement which by their nature survive the termination of this Agreement or final completion thereof, including, without limitation, all warranty, indemnification and payment obligations, shall remain in full force and effect after final completion, cancellation or termination of this Agreement.

24. Headings. The headings used herein are for convenience of reference only and in no way define, limit or describe any provision of this Agreement.

25. Entire Agreement. Buyer has not signed this Agreement in reliance upon any promise, condition, or representation not contained within this Agreement, and this Agreement supersedes all prior and contemporaneous agreements, understandings, and negotiations. No waivers, modifications, amendments or changes to this Agreement, including, but not limited to the scope of work, parts, products, specifications, pricing or schedules set forth in the Quote, shall be deemed effective unless in writing and signed by Buyer and a corporate officer of Kennedy.

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