

THE KINETIC CO., INC. TERMS OF SALE

All sales of products and services by The Kinetic Co., Inc. (“**Seller**”) are made on the following terms and conditions. In these Terms of Sale, any products sold by Seller to the buyer named in Seller’s quotation or acknowledgment (“**Buyer**”) are referred to below as “**Goods**,” and any services sold by Seller to Buyer are called “**Services**.”

1. **Agreement.** If Buyer has not otherwise agreed to these Terms of Sale, then Buyer’s acceptance of delivery of, or payment for, the Goods or Services shall constitute Buyer’s agreement to these Terms. Seller objects to and will not agree to any terms that are additional to or different from these terms. Terms that are printed on or contained in a purchase order or other form prepared by Buyer which are additional to, in conflict with or inconsistent with those herein shall be considered inapplicable and shall have no force or effect.
2. **Performance.** Performance of any order received by Seller is expressly conditioned upon acceptance by management at Seller’s home office.
3. **Payment Terms.** Unless otherwise specified in Seller’s quotation or acknowledgment, payment in full of the price is due thirty (30) days after shipment of the Goods or performance of the Services, without discount, except that if at any time Seller determines that Buyer’s financial condition or credit rating does not justify a sale on credit or if Buyer is at any time in default in any indebtedness or obligation that Buyer owes to Seller, then Seller may require advance payment or may ship C.O.D. Payment must be made at Seller’s office in Greendale, Wisconsin or Lock Box in Milwaukee, Wisconsin. Seller have the right to increase its prices at any time upon notice to Buyer to reflect any unusual or unforeseen increase in Seller’s costs, including, but not limited to, an increase in the cost of materials.
4. **Orders.** All orders placed with Seller must be by a signed written purchase order or if a verbal order confirmed in a signed written purchase order.
5. **Delivery and Risk of Loss.** Unless Seller agrees otherwise in writing, Seller shall deliver the Goods F.O.B. (Uniform Commercial Code term) Seller’s facility. Shipping, delivery and performance dates are estimates only, and time is not of the essence. Seller may ship all the Goods at one time or in portions from time to time. Buyer agrees that all freight, express, and delivery charges shall be paid by Buyer and shall not be subject to discount. If Buyer requests the Seller to ship freight prepaid the freight amount invoiced will include an administrative handling fee. If Buyer ships goods to Seller for repair work freight collect Buyer will be invoiced for the cost of the incoming freight plus an administrative handling fee. Delivery will be deemed complete and risk of loss or damage to the Goods will pass to Buyer upon delivery to carrier.
6. **Documents.** All documents will be forwarded to Buyer by Seller via regular mail (if Buyer is within the United States) or airmail (if Buyer is outside of the United States). If Buyer requests copies of any documents they will be forwarded by either regular, airmail or via fax if requested. If Buyer requests any documents be sent via courier service Seller will promptly dispatch the documents. If the courier service must be prepaid by Seller the charges for the courier service will be invoiced by Seller to Buyer; the courier service fee invoiced by Seller to Buyer will include an administrative handling fee.
7. **Taxes.** Seller’s price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Buyer shall be liable for all such taxes, whether or not Seller invoices Buyer for them.



8. **Unavoidable Delay.** If Seller is not able to finish and deliver the Goods to Buyer, or to perform the Services, on time because of anything Seller cannot control (such as casualty, labor trouble, accidents, unavailability of material, supplies or transportation, or Buyer's failure to approve production samples), then the estimated delivery or performance time shall be extended accordingly, and Seller shall not be liable to Buyer for any damages caused by the delay.
9. **Force Majeure.** Except for payment of money, neither party shall be held responsible for any delay or failure in performance to the extent that the delay or failure is caused by causes beyond its control ("**Force Majeure Condition**") including, but not limited to: fire, flood, explosion, machine breakdown, war, strike, embargo, government requirements, civil or military authority, act of God, act or omission of carriers, inability to obtain material, or other similar causes. If any Force Majeure Condition occurs, the party delayed or unable to perform ("Delayed Party") shall give immediate notice to the other party ("Affected Party"), and the Affected Party, upon giving prompt notice to the Delayed Party, shall be excused from performance for the duration of the Force Majeure Condition, provided, however, that the Affected Party shall take all reasonable steps and cooperate with the Delayed Party to avoid or remove the cause of non-performance and shall resume performance hereunder with dispatch when the cause is removed.
10. **Changes.** Seller shall have the right to make design or engineering changes in its parts, equipment, processes and methods of manufacture, but Seller will not, without Buyer's prior approval, make any changes in operational or dimensional specifications that Buyer submits. Stenographical and clerical errors in quotations are subject to correction.
11. **Pricing.** Seller may from time to time revise its prices.
12. **Defects; Remedies.** Buyer agrees to inspect the Goods immediately upon receipt of such Goods from Seller. If, prior to use, installation or alteration by Buyer, any item of Goods not subject to abuse or misuse proves to be defective (as defined below) within 30 days following the date of shipment, and if Buyer gives written notice to Seller of such defect within that period and does not use, install or alter the Goods, then Seller shall, at Seller's option, either repair or replace the defective item, at Seller's expense. Notice of a breach of Seller's warranty must be made in writing addressed to Seller, setting forth sufficient detail to permit identification by Seller of the claimed defect. Samples should accompany such notification. If Buyer uses, installs or alters the Goods or fails to notify Seller within the 30 day period following shipment of the Goods, any claim for breach of warranty shall be conclusively deemed to have been waived by Buyer with respect to the alleged defect. In the event of a defect in any Goods constituting a breach of the warranty provided herein, Seller shall furnish instructions for the disposition of the defective Goods. Seller shall have the option of requiring the return of the defective Goods, transportation prepaid, and proof that the Goods were not used, installed or altered or subject to misuse or abuse to establish the claim. No Goods shall be returned to Seller without its prior consent. The acceptance of any Goods returned to Seller shall not be deemed an admission that the Goods are defective or in breach of any warranty, and if Seller determines that the Goods are not defective they may be returned to Buyer at Buyer's expense. If Seller fails to repair or replace any defective item within a reasonable time, then Seller shall be liable to Buyer for the lesser of (i) the reasonable costs of repair or replacement by a third party, or (ii) that part of the purchase price of the defective Goods that shall have been paid by Buyer, but Buyer shall not obtain repair or replacement by a third party without giving Seller at least fifteen (15) days prior written notice, during which time Seller may repair or replace the defective item.



An item shall be considered “defective” if Seller determines (i) that the item does not meet the dimensional tolerances submitted by Buyer and agreed to by Seller or (ii) that Seller did not use the Goods specified by Buyer and agreed to by Seller, and if the defect materially impairs the value of the Goods to Buyer. Goods shall not be defective to the extent that they are damaged due to the method or length of storage. Seller does not warrant the workmanship of others who have performed work on, provided materials for, or used the Goods. If Buyer’s representative agrees, either orally or in writing, to a change in or waiver of the dimensional tolerances or materials specifications for any item of Goods, then such Goods shall not be considered defective to the extent they conform to the specifications as so changed or waived. This paragraph sets forth Buyer’s sole and exclusive remedies for any defect in the Goods. Neither Buyer nor any other person may modify or expand the warranty provided herein, waive any of the limitations, or make any different or additional warranties with respect to the Goods. Any statements to the contrary are hereby rendered null and void unless made in a writing signed by an authorized officer of Seller.

13. **Limitations.** EXCEPT AS STATED IN *PARAGRAPH 11*, SELLER DOES NOT MAKE ANY WARRANTY AS TO THE GOODS OR SERVICES AND, IN PARTICULAR, DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS. Seller shall not have any tort liability to Buyer or any other person with respect to any of the Goods or Services and shall not be liable for consequential, incidental, special, exemplary, indirect or punitive damages arising from any product defect, delay, nondelivery, recall or other breach. Buyer shall not have any right of rejection or of revocation of acceptance of the Goods.
14. **Solvency and Security Interest.** Buyer represents that Buyer is solvent. Seller retains a security interest in the Goods to secure payment of the price and all other indebtedness that Buyer now and in the future owes to Seller.
15. **Permits and Compliance.** Seller is not responsible for obtaining any permit, inspection or license that is required for installation or operation of the Goods. Seller does not make any promise or representation that the Goods will conform to any law, ordinance, regulation, code or standard.
16. **Safety Features.** Buyer shall install and operate the Goods properly and shall not remove or change any safety device, warning or operating instructions that Seller placed on the Goods.
17. **Components of Another Product.** If any of the Goods constitute parts or components that are to be incorporated or installed in a product that is manufactured or assembled by or for Buyer, then (1) Buyer shall obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses required for installation or operation of the product, (2) Buyer shall cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (3) Buyer shall place on the product all safety devices and warnings, and shall furnish to its buyer all operating instructions, that are necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.
18. **Resale.** On any resale of the Goods, Buyer shall contractually limit its buyer’s rights and remedies against both Buyer and Seller to the same extent that *Paragraphs 11 and 12* above limit Buyer’s rights and remedies.
19. **Quantities.** Seller may overrun or underrun the agreed-upon quantities by up to 10% (ten percent), and Buyer shall pay Seller at the unit price for quantities that Seller delivers within these limits. Any claim by Buyer that Seller failed to deliver the agreed-upon quantity of Goods (subject to any adjustment under the preceding sentence) must be submitted to Seller in writing within thirty (30) days after Buyer receives the Goods. If Buyer fails to do so, then it shall be conclusively presumed that the proper quantity was delivered.



20. **Blanket Purchasing Agreement.** If the agreement between Seller and Buyer is a blanket purchasing agreement under which Buyer will from time to time issue to Seller “releases” with respect to portions of the Goods, then, except to the extent that Seller otherwise expressly agrees in writing, (1) when Buyer issues a release for any of the goods, Seller shall be permitted to ship all of those Goods when Seller receives the release, notwithstanding any contrary provision in the release, (2) any delivery dates specified in any release shall be extended automatically to the extent that Seller is not reasonably able to meet such dates and (3) Buyer shall be obligated to release the entire quantity of Goods provided for in the agreement within 90 days after the date on which the agreement is formed.
21. **Intellectual Property and Confidentiality.** All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works and matters that Seller creates or develops in the course of Seller’s design, development or manufacture of the Goods or performance of the services and all drawings and specifications that Seller provides to Buyer (“**Intellectual Property**”) shall be Seller’s sole property, and Buyer assigns, and agrees to assign, to Seller all right, title and interest that Buyer now has or in the future acquires in the Intellectual Property. Buyer shall not disclose or use any of the Intellectual Property or any information about Seller’s business, operations or activities, except to the extent necessary for Buyer to use the Goods or Services.
22. **Cancellation.**
- (a) Buyer does not have any right to cancel its agreement to buy the Goods or Services from Seller. If, however, Seller agrees in writing to permit cancellation, then Buyer shall immediately pay to Seller a cancellation charge in an amount equal to the purchase price (including any tooling charge) less allowances (in amounts that Seller determines) for (1) the realizable value to Seller of any standard components that Seller purchased or ordered before cancellation, (2) the realizable scrap value to Seller of the remaining material and tooling that Seller purchased, fabricated or ordered before cancellation and (3) any direct labor costs that Seller saved by reason of the cancellation.
- (b) If Buyer fails to pay or perform any indebtedness or obligation that Buyer at any time owes to Seller, then Seller may consider Buyer’s failure to be an anticipatory repudiation of any or all outstanding contracts that provide for Seller to sell Goods or Services to Buyer, and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts.
23. **Indemnity.** Buyer shall indemnify and hold harmless Seller with respect to all damages, losses, claims and expenses, including consequential and incidental damages and attorney fees, that Seller incurs as a result of Buyer’s breach of any of Buyer’s obligations under these Terms of Sale or any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller’s manufacture of the Goods, or performance of the Services, to Buyer’s specifications.
24. **Seller’s Rights.** Seller has all rights and remedies that applicable law gives to sellers. Seller’s rights and remedies are cumulative, and Seller may exercise them from time to time. Seller’s waiver of any right on one occasion shall not be a waiver of any future exercise of that right.
25. **Time For Bringing Action.** Any action that Buyer brings against Seller for breach of this Agreement or for any other claim that arises out of or relates to the Goods or their design, manufacture, sale or delivery or the Services must be brought within one year after the cause of action accrues.

26. **Applicable Law.** This agreement between Seller and Buyer shall be considered to have been made in the State of Wisconsin, and it shall be governed by and interpreted according to Wisconsin law. Either party may bring any action that arises out of or relates to this agreement in any federal or state court in Milwaukee County, Wisconsin that has jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.
27. **Complete Agreement; Amendment.** The terms on Seller's quotation and acknowledgment and these standard Terms of Sale contain the entire agreement between Buyer and Seller. Any change in this agreement must be by a writing signed by an authorized officer of Seller.

