

KSS Sales Proposal Terms & Conditions

These Sales Proposal Terms and Conditions apply to the accompanying sales proposal and are incorporated therein as if stated therein in their entirety. As used herein, the term "Seller" shall mean Kanawha Scales & Systems, Inc. The term "Buyer" shall mean the party (and/or its successors and/or assigns) purchasing the merchandise, equipment, material, supplies (sometimes referred to herein as the "goods") and/or labor and/or services (sometimes referred to herein as "labor") from the Seller. All communications are to be mailed to the Seller at the address identified in the accompanying sales proposal.

1. **PRICES:** Unless accepted in writing by Buyer or withdrawn by Seller, verbal quotations expire the same day they are made. Unless withdrawn, written quotations automatically expire thirty (30) calendar days from the date issued unless otherwise specified in the accompanying sales proposal. The amounts of any and all increases in Seller's cost occurring after the accompanying sales proposal has been submitted to the Buyer shall be deemed added to the amounts quoted in the accompanying sales proposal. Unless specifically noted otherwise, all prices quoted in the accompanying sales proposal for goods do not include installation, set-up, or calibration.
2. **ACCEPTANCE:** All proposals of the Seller are merely offers to enter into a purchase contract for the goods described in the accompanying sales proposal and all proposals are subject to the Buyer's acceptance and the Seller's control. **Any alteration of the Seller's proposal, conditions, or terms, no matter how slight, shall be considered as materially altering the Seller's proposal. The Seller's offer set forth in the accompanying sales proposal expressly limits acceptance to the exact terms of the Seller's written offer. All terms and conditions that are contained herein shall apply to any purchase order received from the Buyer and accepted by the Seller and all terms and conditions imprinted or written on the Buyer's purchase order that are nonconforming with, or are contrary to, the Seller's terms and conditions are null and void. Any additional terms and/or conditions proposed by the Buyer shall not become part of the agreement between the parties unless the Seller accepts such additional terms and/or conditions in writing.**
3. **SPECIFICATION CHANGES:** Any changes from the original specifications on which an accepted order is based, will not be accepted unless requested in writing by the Buyer and accepted in writing by the Seller. Any such agreed changes will be subject to the following condition: If such change increases the cost of any product, including actual component costs and expenses incurred in modifying a partially or completely manufactured item, then such additional expenses shall be added to the original agreed upon price.
4. **DELIVERY:** Any delivery date quoted is the Seller's best estimate of the date goods will be shipped based on the manufacturer's production schedule in effect at time of proposal. The

Seller shall not be liable for delays caused by fires, strikes, accidents, manufacturer's delay, or other causes beyond the Seller's reasonable control. The Seller shall not have any liability for loss, damages, or consequential damages due to delays.

5. SHIPMENT: All prices are F.O.B. at point of manufacture unless otherwise stated in the accompanying sales proposal.
6. DAMAGE OR LOSS IN SHIPMENT: The Seller is not responsible for damage or loss in transit and all claims must be made by the Buyer directly to the carrier. Claims for shortages or incorrect equipment must be made in writing within thirty (30) days after receipt of the shipment by the Buyer. Failure to give the Seller such written notice within such thirty (30) day period shall constitute an unqualified acceptance of the equipment and a waiver by the Buyer of any and all claims.
7. TITLE; SELLER'S SECURITY INTEREST: Title shall vest in the Buyer directly from the manufacturer when the goods are delivered by the manufacturer to a carrier or by the Seller to a carrier. It is expressly agreed that the Seller shall have a purchase money security interest and the Buyer hereby grants such a security interest to the Seller in and to all goods described in the accompanying sales proposal. The Seller shall have the right to retake possession of said goods at any time after delivery to the Buyer unless and until the Seller receives the full purchase price of all goods in accordance with the stated terms. The Buyer shall execute at any time any financing statement or further security agreement required by the Seller and failure to promptly execute such documents upon the Seller's request shall constitute a default. Upon the Buyer's default, the Seller shall be entitled to recover all costs and expenses of repossession including but not limited to attorney's fees of the Seller as provided herein.
8. CANCELLATION: After the good(s) and order are accepted, orders cannot be cancelled or modified, nor can the Buyer request that the shipment or release of an order be delayed, except with the Seller's consent and subject to conditions then to be agreed upon, which shall include, but not be limited to, protection of the Seller against any and all resulting losses.
9. TERMS OF PAYMENT: Unless otherwise noted in the accompanying sales proposal, terms are net cash thirty (30) days from date of invoice ("Due Date"). All orders are subject to credit check and approval by the Seller and subject to cancellation by the Seller if the Buyer's credit is found to be unsatisfactory. The Buyer shall pay all costs and expenses, including attorney's fees, incurred in collecting or attempting to collect any sums overdue according to the terms of the purchase contract. For purposes herein, costs and expenses also include, but are not limited to, attorneys' fees and all legal expenses whether or not there is a lawsuit filed; and attorneys' fees and legal expenses to pursue any claims in bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. If any check or other payment by the Buyer is dishonored by the Buyer's bank, Seller may charge a fee of \$30.00 to Buyer, or such amount Seller is charged on account of such

dishonored item, whichever is higher, and this amount shall be added to the unpaid balance of the invoice. Acceptance of any payment by the Seller after breach of the terms and conditions of this agreement by Buyer shall not waive any rights or remedies accruing to the Seller as a result of such prior breach; and acceptance of any partial payment by the Seller shall not waive any right of the Seller to collect any remaining amounts due.

10. FINANCE CHARGE: A finance charge in the amount of 1.5% interest per month (18% per year) shall be charged on all unpaid invoices both before and after any judgment.
11. TRUST FUNDS: All funds owed to the Buyer or received by the Buyer resulting from labor and/or goods supplied by the Seller to the Buyer shall be held in trust for the benefit of the Seller until the Buyer has fully paid the Seller for such labor and/or goods. Even if the Buyer commingles such trust funds with other funds of the Buyer, Buyer does not have any right, title or interest in such trust funds and agrees to promptly account for and pay Seller such trust funds.
12. TAXES: All quoted prices are subject to the addition of any and all applicable sales, excise, manufacturer's, use, and/or other taxes levied by municipal, state, federal, and/or other authorities. The Seller will automatically add any and all applicable taxes unless the Buyer specifically and conspicuously includes its tax exemption number on, and includes a copy of its tax exemption certificate with, its purchase order.
13. INSTALLATION SERVICES: Installation by the Seller's personnel, if included herein, is predicated on the availability and accessibility of the equipment and the area in which the installation is to take place. Delays and stand-by time caused by the Buyer are not included and if they occur during installation, will be billed to the Buyer at the Seller's prevailing service rate.
14. CLERICAL ERRORS: All clerical errors by the Seller are subject to correction.
15. ESCALATION: The prices set forth in the accompanying sales proposal are calculated on the basis of wage scale and material prices in effect on the proposal date and are subject to increase in accordance with any increases that may take place prior to shipment, subject to any government restrictions that may be imposed.
16. WARRANTY AND LIABILITY: The provisions in the specifications attached hereto are descriptive and not intended as warranties. The Seller hereby warrants the goods described in the accompanying sales proposal against defects in material and workmanship, under normal use and service, for a period of one (1) year as to parts only. Such warranty period shall commence on the date of shipment. The Seller's obligation under this warranty within the time stated above is limited to: (1) furnishing, repairing, or replacing, f.o.b. the Seller's location, any part proven to have been defective at the time of shipment, provided the Buyer has given the Seller immediate written notice upon discovery of the defect; (2) any component part or parts not of the Seller's own manufacture shall not exceed the warranty which is extended to the Seller by the supplier or manufacturer of such parts or goods. Notwithstanding the foregoing, any product specific warranty included in any written sales proposal from the Seller shall take

precedence over, but shall not exceed, the scope of the warranty contained in this paragraph. **The foregoing is the only warranty extended by the Seller covering the goods described in the accompanying sales proposal and SELLER HEREBY EXPRESSLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF WHATSOEVER KIND OR NATURE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS.** Any tampering with or alterations of any goods manufactured or provided by the Seller, which alterations are made by any person other than an agent of the Seller, will void all warranties and release the Seller of all obligations and liability hereunder. Improper use of any goods including, without limitation, installation of goods into another product or use of the goods in a manner for which they were not manufactured and intended by the Seller will void all warranties and release the Seller of all obligations and liability hereunder. Seller does not warrant the goods against damage caused by misuse, abuse, negligence, or acts of God.

17. LIMITATION OF LIABILITY: The Seller shall not be responsible or liable for any consequential or contingent damages and its liability is limited solely to the remedies herein above set forth. **The aggregate total liability of the Seller under this contract, WHETHER FOR BREACH OF WARRANTY, OR OTHERWISE, shall in no event exceed the contract price. The Buyer agrees to indemnify and hold the Seller harmless from all claims by third parties that extend beyond the foregoing limitations on the Seller's liability. The Buyer agrees the remedies set forth herein are exclusive. All claims, causes of action, lawsuits, and proceedings the Buyer may have arising from or in any way related to the proposal or the goods subject thereof ("Claim") must be filed by the Buyer within one (1) year of the accrual of such Claim. Any Claim that is not filed within said one-year period is HEREBY FOREVER WAIVED, RELINQUISHED, AND BARRED.**
18. TERMINATION: The Seller, by written notice, may terminate the accompanying sales proposal, in whole or in part. In the event of a termination that is a result of the Buyer's default, the Buyer shall be liable to the Seller for all damages allowed in law or equity.
19. GOVERNING LAW; VENUE: The accompanying sales proposal is made in the State of West Virginia and shall be governed and construed according to the laws of West Virginia. Any lawsuit arising out of or otherwise concerning the sales proposal shall be brought exclusively in an appropriate state court in Kanawha County, West Virginia and the Buyer acknowledges and agrees that such venue shall have exclusive personal jurisdiction.
20. SECTION HEADINGS: Section headings are included for reference purposes only and will not in any way affect the meaning or interpretation of any provision of this agreement.
21. COMMERCIAL PURPOSE: The Buyer warrants that the goods are being obtained for a business and commercial purpose and not for personal, family, or household or other consumer purposes.
22. WAIVER OF JURY TRIAL: The Buyer hereby waives the right to jury trial on all issues, including but not limited to, Claims asserted against the Seller, issues relating to nonpayment of monies

owed to the Seller, defenses, affirmative defenses, and/or all counterclaims in any litigation related to the proposal or the goods subject thereof.

23. ENTIRE AGREEMENT: This agreement contains the entire agreement of the parties with respect to the goods described in the accompanying sales proposal, and it supersedes any and all other agreements and/or understandings, whether written or oral, with respect to the goods. The provisions of this agreement shall take precedence and control over all inconsistent provisions set forth in any prior, contemporaneous, or subsequent contract, purchase order, purchase memo, proposal, or other written instrument executed by the parties from time to time, unless the terms of this agreement are expressly superseded by express written intention of the parties in a subsequent written and signed document. If this agreement is generated following receipt of a purchase order, purchase memo or other document prepared by the Buyer, the terms and conditions of this agreement shall supersede and take precedence over any such document and shall be controlling. This agreement may be amended only by an instrument in writing signed by the Seller and the Buyer.