



Terms and Conditions

1. Proposal Constitutes Seller's Offer.
 - A. This proposal, including the quotations, drawings, specifications and terms and conditions stated herein constitutes an offer by Seller which may only be accepted on the exact terms set forth herein, and supersedes all prior oral or written statements or documents made with respect to the subject matter hereof. No reference herein to Buyer's inquiry or specifications shall in any way modify the terms and conditions hereof. If, in lieu of acknowledging acceptance hereon, Buyer shall issue its written purchase order for the equipment and/or services described herein, such act shall constitute Buyer's unqualified acceptance hereof. Notwithstanding the foregoing, Buyer's acceptance of this proposal is expressly limited to and conditioned upon Buyer's acceptance of, and assent to, these terms and conditions and those referred to herein. Any additional, inconsistent or different terms and conditions contained in Buyer's purchase order or other documents submitted by Buyer to Seller at any time, whether before or after the date hereof, are hereby expressly rejected by Seller.
 - B. This offer may be withdrawn by Seller at any time prior to Buyer's acceptance. If accepted by Buyer subsequent to thirty (30) days from the date hereof, it shall not bind Seller without Seller's written consent. Accompanying quotes, specifications and drawings are property of Seller, shall not be used by Buyer for any purpose other than to evaluate this proposal, and all copies shall be returned to Seller if this offer is not accepted. Seller reserves the right to make design changes for product modernization or improvement subsequent to issuance of quotation.
2. Title.
 - A. The title to the equipment, material, and operating electrical control system as provided and installed by Seller ("Equipment") shall remain with Seller and shall vest in purchaser only upon payment in full to Seller of all amounts due hereunder (including any Buyer approved change orders). In addition, Seller shall retain title to and a purchase money security interest in all Equipment sold hereunder until the purchase price shall be fully paid, and Buyer shall perform all acts that may be necessary to perfect and assure retention of title to the Equipment by Seller and, if requested by Seller, shall execute a security agreement and/or a UCC financing statement covering the Equipment. Until the purchase price is paid in full, Buyer shall make certain that (i) none of the Equipment is transferred, pledged, or disposed of by Buyer, (ii) all Equipment retain its personal property character in order not to be characterized as fixtures and (iii) if any Equipment that is placed on any property is subject to any mortgage, lien or encumbrance, then such Equipment shall be expressly excluded from the terms of such mortgage, lien or encumbrance. If Buyer defaults, Seller will have all of the rights of a secured creditor under the Uniform Commercial Code as enacted in the State of Ohio.
 - B. Until payment in full is received by Seller, Buyer shall keep Equipment on its premises, and shall not remove any Equipment from the premises or alter any Equipment without obtaining written approval from Seller.
 - C. Seller shall retain ownership rights to any specific machine or detailed manufacturer component drawings. No proprietary drawings or proprietary software will be provided unless specifically negotiated and agreed upon prior to acceptance of a contract. If provided to Buyer, all information will be provided in the manufacturer's standard format.
3. Terms of Payment (Subject to Credit Approval) unless otherwise stated in proposal
 - A. Materials Only
 - 30% Down Payment
 - 70% net 10 upon shipment
 - B. Projects Requiring Installation
Materials and Installation:
 - 30% Down Payment
 - 60% progress due at time of shipment(s);
 - 10% net 10 upon completion of installation
 - C. Accounts are opened only with firms or individuals who are satisfactorily rated by an appropriate credit authority. All other Buyers must pay cash in advance of delivery. If the financial condition of Buyer shall at any time, in the judgment of Seller, not warrant shipment of equipment ordered, Seller may, at its option, require full payment prior to shipment or refuse to ship, stop shipment and/or terminate without liability.
 - D. A Finance Charge of 1½ % per month (18% per annum) will be charged on past due accounts. Buyer shall be solely responsible for all finance charges accruing as a result of delayed payments for any reason, including delays attributable to its use of a leasing or finance company.
4. Limited Warranties

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- A. Seller hereby represents and warrants that the products sold hereunder are free from defects in design, material and workmanship when used in the manner and for the purpose for which designed, and in accordance with all instructions and directions for installation, operation and maintenance furnished by seller to buyer on the applicable purchase date, for a period of one year from receipt at buyer's designated facilities ("warranty period"), subject to the following conditions:
- B. Buyer shall notify seller in writing promptly upon discovery of facts giving rise to any claim under this warranty, stating specifically the nature of the claim, the approximate date of discovery of same and identifying by serial number and invoice the product involved. Failure to so notify seller during the applicable warranty period of facts giving rise to the claim shall fully and completely relieve seller from any obligation under this warranty
- C. No claim under the terms of this warranty will be accepted by seller unless and until the nature of the claim shall have been established to the reasonable satisfaction of an authorized representative of seller, and no return of any product claimed to be defective will be accepted unless accompanied by a Returned Material Authorization, which shall be promptly supplied by seller. All returns to seller shall be at buyer's expense
- D. If any product or component that is reasonably found by seller to be defective under the terms of this warranty, seller's obligations under this warranty are expressly limited to (a) the repair or replacement, at seller's option and expense, of any products or components reasonably determined by seller as aforesaid to be defective under the terms of this warranty, and (b) all direct damages incurred by buyer arising from or in connection with the defective products sold hereunder. All shipments to buyer shall be at seller's expense
- E. This warranty applies only to products properly used and maintained and is expressly non-applicable to any products or components which have been repaired, altered or changed other than in accordance with instructions and directions furnished by seller on the applicable purchase date and its authorized representatives or agents, or to any product which has not been operated or utilized in accordance with instructions or directions furnished by seller on the applicable purchase date.
- F. This warranty does not apply to normal wear or consumable parts.
- G. Seller makes no warranty for products expressly sold as "used", including without limitation any warranty of merchantability or fitness for a particular purpose with respect to the products unless otherwise stated in the attached proposal.
- H. Seller hereby represents and warrants that the services provided by or for seller under this Contract are performed in a workmanlike manner consistent with industry standards.
- I. **DO NOT ALTER OR DISMANTLE PRODUCT PARTS. SELLER WILL NOT BE RESPONSIBLE FOR ANY MODIFICATIONS TO THE PRODUCT PARTS MADE BY ANY PARTY OTHER THAN SELLER OR ITS AUTHORIZED REPRESENTATIVES OR AGENTS, AND ANY SUCH MODIFICATIONS TO PRODUCT PARTS WILL VOID THE SELLER'S WARRANTY. WARRANTY DOES NOT COVER PARTS THAT HAVE BEEN INSTALLED IMPROPERLY BY NON-KMH Systems, Inc. EMPLOYEES, REPRESENTATIVES OR AGENTS, ABUSED BY BUYER, MISUSED BY BUYER, NEGLECTED BY BUYER ACCORDING TO PLANNED MAINTENANCE PROCEDURES, SERVICED BY NON-KMH Systems, Inc. EMPLOYEES, REPRESENTATIVES, OR AGENTS, USED FOR PURPOSES OTHER THAN ORIGINALLY DESIGNED FOR AS REFLECTED IN THE SPECIFICATIONS PROVIDED TO BUYER ON THE PURCHASE DATE, AND/OR DAMAGED DUE TO USING ACCESSORIES SUPPLIED BY ANY COMPANY OTHER THAN KMH Systems, Inc. OR ITS AUTHORIZED REPRESENTATIVES OR AGENTS.**
- J. **THESE WARRANTIES COMPRISE THE ENTIRE AND SOLE WARRANTIES PERTAINING TO THE PRODUCTS AND SERVICES SOLD HEREUNDER. SELLER MAKES NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR PURPOSE, WHETHER EXPRESS, IMPLIED OR ARISING BY OPERATION OF LAW, TRADE USAGE OR COURSE OF DEALING, EXCEPT AS SET FORTH HEREIN. ANY OTHER REPRESENTATIONS, STATEMENTS OR PROMISES MADE BY ANY PERSON ARE UNAUTHORIZED AND ARE NOT BINDING UPON SELLER UNLESS SEPARATELY SET FORTH IN WRITING.**
- K. There is no warranty or pre-owned (used) equipment, express or implied, unless specifically detailed within the body of this proposal

5. Performance and Delivery

- A. All delivery dates stated by Seller are approximate dates only and estimated in good faith to the best of Seller's ability. Time shall not be deemed to be of the essence in making delivery hereunder unless specifically agreed to in writing by Seller. Partial shipments may be made by Seller.
- B. If Buyer requests a change to be made in design or construction of equipment, or otherwise delays or interrupts the progress of work by Seller, Buyer will reimburse Seller for any additional expense resulting therefrom and Seller will credit Buyer for any reduced costs resulting from any such change.
- C. Subject to the written approval of either party, the other party may make changes in design, construction or material necessary to assure equipment operation and timely delivery. If Buyer requests the changes, Buyer shall reimburse Seller as provided above and if Seller requests the change, Seller shall credit Buyer for any resulting decrease in the purchase price or else Seller shall be reimbursed by Buyer as provided above. Additional charges may be made to cover any unforeseen or unusual cost elements that have not been contemplated by Seller or Buyer, including but not limited to overtime work authorized by Buyer, special packing, engineering or documentation.
- D. Seller shall not be liable for any delay or inability to perform caused by a force majeure or any cause whatsoever beyond the reasonable control of Seller, including but not limited to work stoppages and governmental regulations. In the event of any delay or inability to perform, the time for Seller's delivery or performance shall be extended by a period equal to the time lost on account of such delay or inability, and such delay or inability shall not relieve Buyer of its obligation to accept remaining deliveries.

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- E. If delays due to the fault of Buyer exceed 60 days in total, Seller may terminate the undelivered portion of the order and the entire purchase price (less Seller's estimated cost for completing the contract and less any partial payments theretofore made) shall be due and payable to Seller.
- F. If Buyer terminates this Agreement for any reason, Seller shall be compensated for all work performed and cost incurred plus a reasonable profit thereon.

6. Insurance and Risk of Loss

- A. Seller will carry policies of insurance as follows, will, if requested by Seller, cause Seller to be listed as an additional insured on such policies, and will not terminate such policies until performance hereunder is complete.
 - 1. Worker's compensation insurance for its employees with coverage level in an amount equal to or greater than the amount required by state regulations.
 - 2. Comprehensive general liability, including contractor's protective and completed operations with a minimum \$5,000,000 coverage for each occurrence including umbrella coverage.
 - 3. Comprehensive automobile personal injury liability and property damage liability insurance covering owned and non-owned vehicles, with combined single limit of at least \$1,000,000.
 - 4. Umbrella liability, subject to a limit of at least \$5,000,000 each occurrence and aggregate applying excess over the coverage indicated above.
 - 5. Insurance risk and risk of loss to the Equipment will rest with Buyer upon delivery of the Equipment to carrier at Seller's shipping point, and Buyer will be responsible for filing any damage claims with the carrier as might be required.

7. Permits, Site Preparation, Storage and Installation.

- A. Buyer shall provide and pay for all licenses and permits required for completion of installation.
- B. Buyer is responsible for any floor, roof, or other such building structure design and capacity that may be used for the installation of the equipment. Buyer shall obtain and pay the cost for any independent engineering review of Buyer's building structure that may be required prior to the start of installation by Seller. Seller shall provide engineering information that defines the load to be placed upon the building structure by the equipment.
- C. All necessary excavations, foundations, masonry, and concrete and any design drawings are to be provided and paid for by Buyer. Buyer shall clear the installation site, remove all obstructions, and make all necessary building alterations before Seller's Installation Supervisor arrives. Buyer shall furnish without charge electric current, compressed air, water, light, heat and toilet facilities. Seller is to have the use of any elevator or crane service available on the premises without charge for the handling of material during the installation. Upon arrival of the equipment, Buyer shall unload all equipment and provide safe, dry inside storage near the installation area or deliver the material to the installation area as required. Equipment exposed to the weather or stored in the open under tarpaulin or plastic may require reconditioning before installation, at Buyer's expense.
- D. All installations are to be done only during regular working hours and regular workdays. Upon Buyer's written consent, work will be done beyond the regular work hours or regular workday at premium or extra pay for overtime work.
- E. Unless otherwise expressly stated, Seller's installation price is based on the use of all non-union labor.

8. System/Equipment Acceptance

- A. Unless deemed accepted by Buyer pursuant to Paragraphs C or D of this Section 8, upon completion of installation and after giving Buyer reasonable notice, Seller shall conduct a system inspection/performance test. The inspection/test shall be of such duration to assure that the design conditions as specified in Seller's proposal have been achieved, but in no case shall such test exceed 10 hours duration or span over two calendar weeks. Buyer shall make available at its expense, sufficient personnel, material specified to be handled, power, and other utilities and facilities, so that the performance test may proceed without delay.
- B. Following satisfactory completion of the performance test described in paragraph A above, the system shall be deemed accepted by Buyer ("System/Equipment Acceptance"). Absence of minor items of work or material not adversely affecting commercial operation shall not be cause to delay the performance test nor to defer acceptance of the system by Buyer.
- C. If for reasons beyond Seller's control, the performance test is not completed within thirty (30) days after Seller's notice of readiness for test, the system shall be deemed accepted by Buyer.
- D. In the event Buyer commercially operates the system or a part thereof prior to Seller's completion of installation, such commercial operation shall constitute Buyer's acceptance of the system or part thereof (Buyer's acceptance pursuant to Paragraphs C or D of this Section 8 shall also be a "System/Equipment Acceptance" as used herein).

9. Indemnification.

- A. Seller shall hold harmless and indemnify Buyer, its agents and employees, from any and all third party claims, suits, losses and expenses, including attorney's fees, provided that any such claim, suit, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to property (excluding loss of use thereof) which is caused by (a) gross negligence of Seller, its agents, employees, subcontractors or suppliers, or (b) a defect in the design, material or workmanship of the system or any portion thereof, subject to the limitations of Section 4G above.

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B. Buyer shall hold harmless and indemnify Seller, its agents and employees from any and all third party claims, suits, losses and expenses, including attorney's fees, provided that any such claim, suit, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to property (excluding loss of use thereof) which is caused by (a) modifications to the system or any portion thereof made by Buyer, its agents, employees, servants, contractors or assigns; (b) the improper use or operation of the system or any portion thereof by Buyer, its officers, agents, employees, servants, contractors or assigns; or any other cause other than as set forth in 9A above.

10. Duty and Taxes.

A. In addition to the specified purchase price, Buyer will pay all taxes, duties, excises, license or inspection fees and other charges levied, assessed or imposed upon Seller or Buyer applicable to the manufacture, sale, purchase, delivery or use of the equipment furnished or any parts thereof, as well as the cost by which hereunder such manufacture is increased by reason of any law, ordinance, or regulation adopted or promulgated by any governmental subdivision department or agency after the date hereof, but prior to the completion and delivery hereunder. Such payment shall be made to Seller at or before the time such payment is required to be made.

11. Complete Agreement.

A. The complete agreement between Seller and Buyer is contained herein, and no additional or different term or condition stated by Buyer shall be binding on Seller unless agreed to by Seller in writing. The quotation shall become a contract when accepted by Buyer and confirmed by an authorized executive of Seller. Failure of Seller to insist upon strict performance of any of these terms and conditions stated herein shall not be considered a continuing waiver of any such term or condition or any right of Seller.

12. Governing Law.

A. Unless otherwise specified in Seller's acknowledgement, all orders are accepted by Seller at its general offices in Ohio and shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any legal action or proceeding arising from or in connection with this agreement shall be brought exclusively in the state or federal courts located in Cincinnati, Ohio.
B. In the event of any litigation or collection action arising out of this agreement, Seller shall be entitled to reimbursement from Buyer for its actual reasonable attorney's fees and costs.

13. Waiver.

A. Waiver by Seller of a breach of Buyer of any provisions hereof shall not be deemed a waiver of future compliance therewith, and such provision, as well as other provisions hereunder, shall remain in full force and effect. Seller hereby expressly reserves the right to literal compliance with the terms hereof, even if unenforced in prior transactions with Buyer.

14. Severability.

A. In the event that any paragraph or clause of this agreement is held or declared unenforceable or void for any reason, all paragraphs and clauses hereof which can be effected without such voided paragraphs or clauses shall remain in full force and effect.

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