


## TERMS AND CONDITIONS OF SALE

- CONTRACT TERMS:** Any purchase order received by KOSO ("Seller") shall be construed as a written acceptance, subject to credit approval by Seller, of our offer to sell and shall be filled in accordance with the terms and conditions of sale set forth herein. Additional or different terms and conditions submitted by Buyer shall be deemed objected to by Seller unless accepted by Seller in writing.
- FIRM PRICES:** Unless otherwise specified in our sales quotation: (a) Quoted prices are firm if an order is placed within thirty (30) days of the quote date, (b) Payment terms are net thirty (30) days after date of invoice, (c) all amounts due must be paid in United States currency.
- OTHER CHARGES AND RISKS:** Unless otherwise specified in our sales quotation: (a) transportation charges shall be based upon point of manufacture and shall be paid by the Buyer, (b) installation charges shall be borne by Buyer, and Seller has no obligation to install the goods for Buyer, (c) customs duties, consular fees, insurance charges and other applicable charges shall be borne by the Buyer, and (d) responsibility for goods sold including risk of loss shall pass to the Buyer F.O.B. point of manufacture, unless otherwise specifically accepted by Seller in writing.
- TAXES:** Any tax or other charge imposed by law on the sale or production of goods or the performance of services shall be paid by the Buyer, unless the law specifically provides that such payment must be made by Seller.
- LIMITED WARRANTY:** Subject to Limitation of Liability below and unless otherwise expressly provided herein, Seller warrants title and that the goods will be free from defects in materials or workmanship under normal use and service until the expiration of the earlier of twelve (12) months from the date of initial operation or eighteen (18) months from the date of shipment. If, within thirty (30) days after Buyer's discovery of any such defects, Buyer notifies Seller thereof in writing, seller shall, at its option, promptly repair or replace, F.O.B. point of manufacture, that portion of the goods found by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period specified above shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Goods repaired and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period. Subject to the above and except as otherwise expressly provided in this contract, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or in combination with any other material.
- LIMITATION OF LIABILITY:** (a) BUYER'S EXCLUSIVE REMEDY SHALL BE FOR DAMAGES, AND SELLER'S TOTAL LIABILITY FOR **ANY** AND ALL LOSSES AND DAMAGES ARISING OUT OF ANY CAUSE WHATSOEVER (WHETHER SUCH CAUSE BE BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) RELATED HERETO SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE GOODS IN RESPECT OF WHICH SUCH CAUSE ARISES OR, AT SELLER'S OPTION, THE REPAIR OR REPLACEMENT OF SUCH GOODS, AND IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RESULTING FROM ANY SUCH CASE. Seller shall not be liable for, and Buyer assumes liability for, all personal injury and property damage connected with the handling, transportation, possession, processing, further manufacture, other use or resale of the goods, whether the goods are used alone or in combination with any other material. Neither transportation charges for the return of the goods nor any other costs or charges incurred by the Buyer will be paid by Seller unless authorized in advance by Seller. **All** goods returned for repair are to be shipped prepaid for the account of Buyer. (b) If Seller furnishes technical or other advice to Buyer, whether or not at Buyer's request, with respect to processing, further manufacture, other use or resale of the goods, Seller shall not be liable for, and Buyer assumes all risk of, such advice and the results thereof.

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7. **PRODUCT MODIFICATIONS:** Seller reserves the right to change or modify the design and construction of any of its products, in due course of its manufacturing procedure, without incurring any obligation to furnish or install such changes or modifications on products previously or subsequently sold.
  8. **DELIVERY DELAYED BY BUYER:** Seller reserves the right to invoice and Buyer agrees to pay for any or all finished material ready for shipment when shipment is held up pursuant to Buyer's written instructions. Delayed material will be held at customer's risk and expense pending instructions.
  9. **TERMINATION BY BUYER:** Once purchase orders are placed, they can only be cancelled with Seller's written consent and upon terms which will save Seller from loss. No goods may be returned for credit or adjustment without written permission from Seller's home office.
  10. **NOTIFICATION OF CLAIMS:** All claims regarding shortages must be made within thirty (30) days from receipt of shipment and must be accompanied by the packing list(s) covering the shipment.
  11. **DELIVERY:** Promises of delivery are given as accurately as conditions permit and every effort will be made to make deliveries as scheduled. All shipping dates are based on receipt of a firm order with complete information contained therein. In addition, because scheduled shipping dates are based on standard quality control checks as a part of the normal production sequence, additional inspection or testing required by Buyer which affects normal production sequence will be considered as extending the shipping dates accordingly. Seller assumes no liability for damages arising out of failure to deliver material as promised.
  12. **FORCE MAJEURE:** Seller shall not be liable for failure or delay in delivery due to acts of God, orders bearing priority rating established pursuant to law, differences with workmen, local labor shortages, fire, flood or other casualty, governmental regulations or requirements, shortages or failure of raw materials, supplies, fuel, power or transportation, breakdown of equipment, or any other causes beyond Seller's reasonable control, whether of similar or dissimilar nature than those enumerated. Seller shall have such additional time with which to perform as may be reasonably necessary under the circumstances and shall have the right to apportion its production among its customers in such a manner as it may consider to be equitable. In no event shall Seller be liable for any consequential damages or claims for labor resulting from failure or delay in delivery,
  13. **COMPLIANCE WITH CERTAIN LAWS:** The goods shall be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and Executive Order 11246.
  14. **PATENTS:** Subject to Section 6, Seller warrants that any goods sold pursuant to this contract, or their use as provided below, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. Patent in existence as of the date of delivery. This warranty is given upon condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged, and if Seller is affected, that Buyer permit Seller to control completely the defense or compromise of any such allegation of infringement. Seller's warranty as to use only applies to infringements arising solely out of the inherent operation (i) of such goods, or (ii) of any combination of goods sold hereunder in a manner designed by Seller.
  15. **MISCELLANEOUS:** The validity, interpretation and performance of this contract and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of California. This contract constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this contract shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be affected by the acknowledgement or acceptance of purchase order or shipping instruction forms containing terms or conditions at variance with or in addition to those set forth herein. No waiver by either Seller or Buyer with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver is expressed in a writing signed by the party to be bound. Buyer shall not (by operation of law or otherwise) assign its rights or delegate its performance hereunder without the prior written consent of Seller, and any attempted assignment or delegation without such consent shall be void.