

Supplemental Terms and Conditions of Sale

1. Applicability.

(a) These Supplemental Terms and Conditions of Sale shall constitute the “Supplemental Seller T&Cs” under and as defined in the Master Terms and Conditions of Sale (the “Master T&Cs”), which shall apply to all sales of Goods and Services (each as defined in the Master T&Cs) by Kennedy Industries, Inc. or KISM, LLC, as applicable (“Seller”). Unless otherwise defined in these Supplemental Seller T&Cs, capitalized terms used in these Supplemental Seller T&Cs shall have the respective meanings assigned to them in the Master T&Cs.

(b) In the event of a specific, express conflict between or among the provisions of the Sale Document, the Master T&Cs, and these Supplemental Seller T&Cs, such provisions shall prevail according to the following order of priority to the extent (but solely to the extent) of such conflict: (i) *first*, the Sale Document; (ii) *second*, these Supplemental Seller T&Cs; and (iii) *third*, the Master T&Cs. Notwithstanding the foregoing, if (but only if) there exists (and remains in effect) a definitive written contract specifically signed by both Parties which expressly states that it governs the sale of the Goods and/or Services governed by these Supplemental Seller T&Cs, notwithstanding the existence of the Sale Document, these Supplemental Seller T&Cs, and the Master T&Cs, then the terms and conditions set forth in such contract shall prevail to the extent (but solely to the extent) they expressly conflict with such Sale Document, these Supplemental Seller T&Cs, and the Master T&Cs.

2. Subsection (g) of Section 9 of the Master T&Cs is supplemented with the following:

Limited Repair Warranty.

- (i) Limited Warranty. Except for Software Support Services (as described below) provided by Seller, all repairs provided by Seller are warranted to be free of defects in material and workmanship for a period of one (1) year after the repaired item is first used, or eighteen (18) months after the date of shipment, whichever period is less (the “Warranty Period”), provided that: (A) the repaired item is in the possession and control of the original user and has not been sold or transferred to, or is in the control of, a third-party; (B) the repaired item has been used properly for its intended purpose and properly maintained; (C) during the Warranty Period Buyer provides Seller with written notice of any defect within thirty (30) days from the earliest date on which the defect should reasonably have been discovered; (D) the repaired item alleged to have a defect in its repair is returned to Seller in accordance with the terms of the “RETURN OF EQUIPMENT” section below, and (E) Buyer has complied with all its payment obligations to Seller for the repairs in question. ALL OTHER WARRANTIES, BOTH IMPLIED AND EXPRESS, ARE EXPRESSLY EXCLUDED BY SELLER AND WAIVED BY BUYER, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO OTHER EXPRESS OR IMPLIED, WRITTEN OR ORAL REPRESENTATIONS MADE BY SELLER’S EMPLOYEES, AGENTS OR REPRESENTATIVES CAN EXPAND THE SCOPE OF THIS WARRANTY OR BE RELIED UPON BY BUYER TO EXPAND THE SCOPE OF THIS WARRANTY UNLESS MADE IN WRITING AND SIGNED BY AN OFFICER OF SELLER. THIS WARRANTY IS NOT ASSIGNABLE OR TRANSFERABLE AND SELLER’S OBLIGATIONS HEREUNDER TERMINATE WHEN ANY PRODUCT IS TRANSFERRED OR SOLD TO ANY THIRD PARTY.
- (ii) Warranty Violations. All warranties are void if any of the following are found to have contributed to the repaired product’s failure and/or defect:
- If the pump or product has been handling abrasive material;
 - If the pump or product is installed in a well or sump, which is not sufficiently straight or plumb;
 - If the pump or product is damaged from electrolysis, graphitization, corrosion or erosion;
 - If air or vapor is allowed to enter the pump section of the product;
 - If the pump or product is misaligned;
 - If the pump or product is misused, operated outside of the parameters for which it was designed, or has not been installed utilizing pumping equipment installation practices per Hydraulic Institute standards; and/or
 - Any other inappropriate Buyer action or inaction, such as mishandling and product abuse, improper storage, improper interfacing, operation outside of design limits, misapplication, improper repair, failure to provide necessary maintenance or unauthorized modification.
 - If any Other Warranty Exclusions are found to have contributed to the repaired product’s failure and/or defect.

- (iii) No Warranty for Third-Party Goods. Seller's Limited Repair Warranty extends only to the repair of the product. SELLER DOES NOT INDEPENDENTLY WARRANT ANY THIRD-PARTY GOODS (SEE SECTION 9(b) OF THE MASTER T&Cs). PRODUCTS, PARTS OR COMPONENTS SUPPLIED BY BUYER, ANY DISTRIBUTOR, SUPPLIER, MANUFACTURER OR ANY OTHER PARTY ARE COVERED ONLY BY THE INDIVIDUAL LIMITED WARRANTY (IF ANY) OF SUCH OTHER PARTY. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY BREACH OF THOSE OTHER WARRANTIES. SELLER ALSO DOES NOT WARRANT ANY SOFTWARE PRODUCTS OR APPLICATIONS, WHETHER CREATED BY SELLER OR A THIRD PARTY.
- (iv) Shipping Damage. Upon receipt of any repaired items shipped to Buyer, Buyer must immediately check for any damage that may have occurred during the shipping process. To make a claim for shipping damage, Buyer must preserve all shipping materials (packaging, shipping containers, etc.) and documents and contact Seller's customer support within 24 hours or by the end of the next business day, whichever comes later, or all claims against Seller arising out of such damage are waived.
- (v) Return of Equipment. All repair work under this Limited Repair Warranty shall take place at Seller's Wixom, Michigan plant, unless otherwise agreed to in writing by Seller. All returns of for defective repairs must be pre-authorized in writing by Seller. Products so returned shall be returned to Seller's Wixom, Michigan plant, with all shipping costs to be borne by Buyer. Seller assumes no liability for labor charges or other costs of any kind, whether direct or incidental to the adjustment, service, repairing, removal or replacement of any products due to defects in repair, or for the expense of repairs made outside of Seller's Limited Repair Warranty conditions. Seller is not responsible for providing and/or paying for the following services as they relate to a warranty claim on a repaired piece of equipment or its return and the following are the Buyer's responsibility unless otherwise negotiated and agreed to in writing by Seller:
- Removal of (warranty repaired) equipment/products;
 - Installation of (warranty repaired) equipment/products; or
 - Any transportation of equipment/products.
- (vi) Specifications. Unless expressly stated otherwise, guarantees in the nature of performance specifications on a product repaired by Seller, if any, are subject to laboratory tests corrected for field performance. Due to the inaccuracies of field testing, if a conflict arises between the results of field testing conducted by or for the user, and laboratory tests corrected for field performance, the latter shall control. No equipment shall be furnished based on results of field testing, unless such tests are made in accordance with the engineering practice outlined in Sections 6.1 through 6.12 (or successor provisions) of the American National Bulletin ANSI/AWWA E101, latest edition.
- (vii) Limitation of Liability. IN ADDITION TO THE LIMITATION OF LIABILITY SET FORTH IN THE MASTER T&CS, SELLER'S LIABILITY FOR CLAIMS WITHIN THE WARRANTY PERIOD OF DEFECTIVE REPAIRS IS FURTHER LIMITED TO, AT SELLER'S OPTION, (A) THE REPERFORMANCE OF THE DEFECTIVE REPAIRS, (B) REPLACEMENT OF ANY PRODUCTS WITH DEFECTIVE REPAIRS, OR (C) RETURN TO BUYER OF THE PRICE PAID BY BUYER TO SELLER FOR SUCH REPAIRS, AND NO OTHER CLAIMS OR DEMANDS WHATSOEVER SHALL BE IMPOSED ON SELLER, IRRESPECTIVE OF FAULT. ALL CLAIMS FOR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY AND SPECIAL DAMAGES, LOST PROFITS, DAMAGE TO REPUTATION, LOSS OF ASSOCIATED EQUIPMENT, COST OF SUBSTITUTE GOODS OR SERVICES, DOWNTIME, OR THE CLAIMS OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATIONS, BUYER'S CUSTOMERS OR ANY PARTIES ALLEGING INTELLECTUAL PROPERTY RIGHTS IN THE PRODUCTS, ARE EXPRESSLY WAIVED BY BUYER.

Software Support Services.

- (i) Seller's software support services ("Software Support Services") include, without limitation, all related components, controls, equipment, parts, products, materials, programming and related services provided by Seller to Buyer in connection with such Software Support Services.
- (ii) Seller's Software Support Services are limited to incident-specific troubleshooting and problem resolution, and specifically exclude: (A) computer programming; (B) software development, and (C) warranty repairs or product replacement. Seller reserves the right to refuse to troubleshoot or service certain software.

- (iii) In some cases, Seller may not be able to diagnose or resolve a problem and Buyer acknowledges that Seller's Software Support Services are offered as a "best efforts" service and without guaranty or warranty. Buyer also acknowledges that Seller is not responsible or liable for any adverse impact or damages which Seller's Software Support Services may cause, including, but not limited to: (A) software crashes, (B) systems failures; (C) hardware issues; (D) network or network configuration issues; or (E) any third-party warranty violations or breach of other service agreements with software vendors and other third-parties resulting from Seller's Software Support Services. Buyer further acknowledges that Seller is not obligated to cure, or be responsible for any problems arising from, any (i) defective software; (ii) malware or viruses (iii) conflicting software; (iv) incompatible software; (v) non-conforming software; (vi) previous modifications to software; (vii) impermissible or unauthorized use of software; (viii) existing illegal conditions; (ix) prior work by others; or (x) any unusual or abnormal conditions.
- (iv) Buyer is solely responsible for: (A) ensuring that its employees, contractors, vendors and agents comply with all instructions and directions issued by Seller; (B) providing Seller with unrestricted access to view and modify all related software and peripheral equipment (including all data, hardware and software components); (C) all restoration and reconstruction of lost or altered files, data, or programs that may occur in the course of Buyer performing the Software Support Services; (D) ensuring that any information or data disclosed to Seller is not confidential or proprietary to Buyer or any third party; and (E) backing up all Buyer's software at all times.
- (v) Seller is not responsible for preserving any programs or data stored on Buyer's computer systems. Buyer must pay Seller at its rates set forth in the applicable Sale Document for all recovery and restore services, even if such services are required due to Seller's actions. Buyer acknowledges that data recovery can be slow, tedious, costly and in some cases, unsuccessful.
- (vi) Buyer shall notify Seller within 24 hours of the discovery of any problem with the Software Support Services provided by Seller or of any other complaint whatsoever that Buyer may have concerning Seller. The failure of Buyer to provide such timely notice shall be deemed a waiver of any claims by Buyer of any complaints against Seller concerning the Software Support Services.
- (vii) SELLER'S LIMITED REPAIR WARRANTY REFERENCED ABOVE DOES NOT APPLY TO SOFTWARE SUPPORT SERVICES AND IS EXPRESSLY EXCLUDED. SELLER DOES NOT PROVIDE ANY WARRANTY FOR ITS SOFTWARE SUPPORT SERVICES. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A WARRANTY FOR SOFTWARE SUPPORT SERVICES, AND ALL WARRANTIES, BOTH IMPLIED AND EXPRESS, ARE EXPRESSLY WAIVED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT INDEPENDENTLY WARRANT ANY THIRD-PARTY GOODS OR SOFTWARE IN ANY MANNER. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY BREACH OF ANY THIRD-PARTY OR SOFTWARE COMPANY WARRANTIES. SELLER ALSO DOES NOT WARRANT ANY SOFTWARE PRODUCTS OR APPLICATIONS, WHETHER CREATED BY SELLER OR A THIRD PARTY.
- (viii) Seller may at its sole option and without penalty terminate this Agreement with respect to any Software Support Services and cease providing any Software Support Services for any reason whatsoever upon 24 hours written notice (email notice being sufficient) to Buyer. In such event, Buyer shall still be obligated to pay for all Software Support Services provided by Seller as of the date of such termination and must still comply with all of the terms and conditions of this Agreement.
