

**TERMS OF SALE FOR KASTO, INC.**

1. **FORMATION OF CONTRACT.** These Terms of Sale are incorporated into the contract between Buyer and Seller. If these Terms are construed to be part of an offer, then such offer expressly limits acceptance to the terms of the offer and notice of objection to any different or additional terms in any response to the offer is hereby given. If these Terms are construed to be part of an acceptance to the terms of an offer, then this acceptance is expressly conditioned upon Buyer's assent to any different or additional terms contained herein. Buyer's acceptance of the product shall constitute its assent to these Terms of Sale. Seller's failure to object to terms contained in any communication from Buyer shall not be deemed a waiver of these Terms of Sale.

2. **PRICES.** Prices are F.O.B Seller's plant, unless otherwise specified in the contract. Prices do not include any taxes, now or hereafter enacted, applicable to the items or to this transaction, all of which taxes shall be Buyer's responsibility. Such taxes may be added by Seller to the sales price.

3. **PAYMENT TERMS.** If Seller extends credit to Buyer, terms of payment will be net thirty (30) days after date of invoice. After the due date, the lesser of one and one-half (1-1/2) percent of the unpaid balance (annual rate of 18 percent) or the maximum late payment penalty charge permitted by law will be added for each month or part thereof that payment is delayed. Additionally, Buyer will be responsible for all costs and fees (including attorneys' fees) which are incurred by Seller for any breach by Buyer of these Terms of Sale, including, but not limited to, failure to pay. Seller has the right, at any time, to change the amount of credit or terms of payment or to withdraw credit and to require partial or full payment in advance as a condition of making further shipments. If Seller delivers in installments, each installment shall be deemed a separate delivery for purposes of this paragraph. Payment shall be made without regard to whether Buyer has made or may make any inspection or tests. Anything herein to the contrary notwithstanding, if shipments are delayed at Buyer's request, payment shall be due on the date Seller is prepared to make shipments. Goods held thereafter by Seller or carrier for Buyer shall be at Buyer's sole risk and expense. Unless otherwise noted, the following payment terms are applicable:

30% - Of the total order value with order placement;

60% - On notification of machine shipment; and

10% - Balance on acceptance of the machine in Buyer's plant or within thirty (30) days of the machine delivery to Buyer's place, whichever is the earlier.

4. **RISK OF LOSS AND DELIVERY; TITLE.** Liability for loss or damage passes to Buyer when Seller puts the goods into possession of a carrier for shipment to Buyer (the carrier being deemed to be acting as Buyer's agent). Seller has the right to deliver in installments. Shipping and delivery dates are approximate only. Please call Seller for stock availability and delivery information. Delivery schedule quoted is based on current schedule and is subject to change. Seller shall not be liable for any loss or expense of any nature (direct, indirect, special, consequential or otherwise) incurred by Buyer if Seller fails to meet such dates for any reason, including, but not limited to, the contingencies stated in paragraph 6 hereof or any other unavoidable production delays, delays in prompt approval of samples by Buyer, modification of specifications previously agreed upon or delays in submission of specifications acceptable to Seller.

Delays in delivery, non-conformity or non-delivery of an installment shall not relieve Buyer of its obligations hereunder with respect to any other installments, each installment being deemed a separate contract. Unless otherwise specified, Seller shall select the mode of transportation and the carrier. All right, title and interest in and to all items covered by Buyer's order are reserved to Seller until the full purchase price for all such items has been paid. Buyer hereby authorizes Seller to execute and file, at any time or times, one or more financing statements with respect to such items, signed only by Seller.

5. **INSPECTION AND ACCEPTANCE.** All goods delivered shall be inspected by Buyer within five (5) days after receipt thereof and goods shall be conclusively deemed accepted by Buyer unless a notice of

rejection has been sent by Buyer to Seller within such five (5) day period. Rejected goods shall be placed by Buyer in safe storage for inspection by Seller.

6. **CONTINGENCIES.** Seller shall not be liable for any delay in performance or for non-performance in whole or in part caused by the occurrence of any contingency beyond the control either of Seller or Seller's suppliers, including but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof affecting the terms of this contract or otherwise, judicial action, labor dispute, accident, fire, explosion, flood, storm or other Act of God, shortage of labor, fuel, raw materials, tools, dies or equipment, or technical or yield failure. Any such delays shall excuse Seller from performance and Seller's time for performance shall be extended, for the period of the delays and for a reasonable period thereafter. If any contingency occurs, Seller may allocate production and deliveries among any or all of Seller's customers as Seller may determine, including without limitation, regular customers not then under contract and Seller's (including Seller's subsidiaries and affiliates) own requirements for further manufacture or other use.

7. **SUBSTITUTION AND MODIFICATION OF GOODS.** Seller has the right to modify the specifications of goods designed by Seller and substitute equivalent goods manufactured to such modified specifications.

8. **WARRANTIES.** Seller except as otherwise herein provided, warrants for a period of twelve (12) months dating from acceptance of goods that the goods shall be free from material defects in materials and workmanship, provided the good(s) are still in the possession of the original Buyer and used under normal and reasonable conditions of operation and maintenance and provided that the Buyer has fulfilled all financial obligations of the transaction. Seller's warranties shall not extend to any items subjected to accident, misuse, neglect, alteration, improper installation, improper testing or unauthorized repair. As to goods not manufactured by Seller, at Buyer's request, Seller, to the extent permitted by Seller's contract with its supplier, shall assign to Buyer any rights Seller may have under any warranty of the supplier thereof.

Seller's warranties extend to the Buyer and to no other person or entity.

Seller's warranties as hereinabove set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of, Seller's rendering of technical advice or service in connection with Buyer's order of the goods furnished hereunder.

THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. **PROPRIETARY RIGHTS AND CONFIDENTIALITY.** All information, know how, programming, software, trademarks, trade secrets, plans, drawings, specifications, designs and patterns furnished or created by Seller or by Seller's agents or contractors (other than Buyer) and any and all property rights embodied therein are and shall remain the sole property of Seller and neither Buyer nor any other party shall have or acquire any interest therein.

10. **TERMINATION.** This contract shall not be terminated by Buyer without Seller's prior written consent. If Buyer terminates (with or without Seller's consent), repudiates or otherwise breaches the contract, in addition to any applicable remedies and damages specified below, Buyer shall be liable for termination charges including, without limitation, a price adjustment based on the quantity of goods actually delivered and all of Seller's losses and costs, direct and indirect (including, without limitation, losses attributable to currency fluctuations and conversion), incurred and committed for this contract together with reasonable allowance for prorated expenses and anticipated profits.

11. **REMEDIES AND DAMAGES.**

(a) Where Buyer rightfully and timely rejects or justifiably revokes acceptance of items or where Buyer has accepted non-conforming items and has timely notified Seller of a breach of warranty, Seller's sole and exclusive liability will be (at Seller's option) to repair, replace or credit Buyer's account with respect to any non-conforming goods returned to Seller during the applicable warranty period set forth above, upon the following conditions:

- (i) **Repair.** Goods returned for repairs shall be packed securely and shall be shipped prepaid.
- (ii) **Returns.** Goods may not be returned for credit without written authorization. Goods sent without prior written authorization will be refused and returned freight collect to the sender.

Where Seller fails to make delivery or repudiates or breaches any other provisions of this contract, including, without limitation, Seller's obligations with respect to non-conforming items, Seller's liability shall not exceed the total contract price specified herein less the purchase price actually received by Seller for any items delivered and accepted hereunder.

In no event will Seller be liable to anyone for special, incidental or consequential damages for breach of any of the provisions of this contract, including, but not limited to, provisions regarding warranties, such excluded damages to include, without limitation, costs of removal and reinstallation of items, loss of use or value of any facilities, expense of replacement products, increased costs of operations or maintenance, loss of goodwill, loss of profits, loss of use or loss or return on investment.

12. **WAIVER.** In the event of any default or breach by Buyer, Seller has the right to refuse to make further shipments. Seller's failure to enforce at any time or for any period of time any of the provisions of this contract shall not constitute a waiver of such provisions or of the right of Seller to enforce each and every provision.

13. **GOVERNING LAW AND VENUE.** This contract shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania and all claims, actions or legal proceedings arising out of, or relating to, this contract shall be brought exclusively either in the Court of Common Pleas of Westmoreland County, Pennsylvania or in the United States District Court for the Western District of Pennsylvania.

14. **ASSIGNMENT.** This contract is binding upon and inures to the benefit of the parties hereto and their successors and assigns but this contract will not be otherwise assignable except that Seller has the right to assign accounts receivable or the proceeds of this contract. Nothing in this contract shall inure to the benefit of or be deemed to give rise to any rights in any third party whether by operation of law or otherwise.

15. **SEVERABILITY.** The provisions of this contract are intended to be severable. If any of these Terms of Sale is declared invalid by a court, agency, commission or other tribunal or entity having jurisdiction thereof, the application of such provisions to parties or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term not so declared invalid or unenforceable shall be valid and be enforced to the fullest extent permitted by law and the rights and obligations of the parties shall be construed and enforced as though a valid commercially reasonable term consistent with the undertakings of the parties under the order has been substituted in place of the invalid provisions.

16. **SET-OFF.** Buyer may not set-off any amount owing from Seller to Buyer against any amount payable by Buyer to Seller whether or not related to this contract.

17. **MERGER.** These Terms of Sale are applicable to the contract between the parties and, with the terms upon which the parties agree, constitute the final written expression of the agreement relating to the transaction and all other previous communications, representations, agreements, promises or statements, either oral or written, with respect to such transaction (including, without limitation, any terms proposed by Buyer) are hereby superseded. No addition to or modification of any printed provision of the contract will be binding upon Seller unless made in writing (referring specifically to Buyer's order) and signed by an officer of Seller. No course of dealing or usage of trade or course of performance will be deemed relevant to explain or supplement any term expressed in the contract.

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