



KEITH STANDARD TERMS AND CONDITIONS OF SALE

Page 1 of 1

1. AGREEMENT: The attached documents and these terms and conditions shall constitute the complete Agreement between W.P. KEITH CO., INC. (hereinafter referred to as Keith) and Buyer for all products and services to be provided to Buyer. No other terms and conditions and no modification or amendment thereof shall be binding unless consented-to in writing by both parties. Buyer may use its purchase order form to place orders for products and services, but only so long as Buyer understands and agrees that the Keith Terms and Conditions govern. Any terms and conditions of Buyer which are in addition to, or inconsistent with the terms and conditions of this Agreement shall be deemed stricken from such order.

2. CHANGES: Buyer shall have the right to make such changes to the products ordered or services to be performed, as Buyer may deem necessary. Written notice of all such changes shall be given to Keith and must be accepted by Keith in writing before Keith proceeds with such changes. If such changes alter the amount due under this Agreement, adjustment of the price shall be mutually agreed to in writing prior to Keith doing any further work. Keith reserves the right to make changes without notice in design and/or material, which in its judgment is an improvement to the product described in the Keith quote.

3. DELIVERY: Keith will use its best efforts in the ordinary course of business to meet delivery date(s) as specified, but in no event, shall Keith be liable for any damage, consequential or otherwise, arising from any failure of Keith to meet any delivery date.

4. SHIPMENT: Buyer shall have the right to state the exact method of shipment preferred. In absence of shipping directions, Keith will use its best judgment in selecting shipper, packing, loading and routing the shipment. Keith shall be entitled to make partial shipments of products covered by this Agreement as such products become available for shipment and may invoice Buyer separately for each such partial shipment. Partial shipment of products shall not relieve Buyer from its obligation hereunder to accept shipments of the remainder of the order.

5. RISK OF LOSS: Title and risk of loss with respect to the products furnished under this Agreement shall pass to Buyer at the time of delivery of the products to the carrier for shipment.

F.O.B. point(s) shall be Keith's plant unless otherwise specified, and constitute delivery.

6. PAYMENT: Keith shall invoice Buyer for the purchase price of each of the products shipped and services rendered pursuant to this Agreement.

Buyer shall pay all amounts specified in any such invoice to Keith within thirty (30) days, unless otherwise specified, from the date of this invoice. Keith may require advanced payment. Any amounts due hereunder from Buyer and not paid within thirty (30) days from the due date thereon shall bear interest at the lesser of the rate of one and one-half percent (1-1/2%) per month or the maximum rate permitted by applicable law. Such interest shall be in addition to any without limitation of any other rights or remedies, which Keith may have under this Agreement or at law or in equity.

7. TAXES: Buyer shall be responsible for all taxes arising out of or related to the provision of products and services under this Agreement, including but not limited to sales, use and excise taxes. All taxes shall be in addition to the sales price unless otherwise stated.

8. RETURNS: Non-stocked materials, or new built to order equipment, may not be returned for credit, but Keith may agree, at its sole discretion, to repurchase such materials at a negotiated price.

9. ACCEPTANCE BY BUYER: The products shall be deemed accepted by Buyer as of their date of receipt unless within fifteen (15) days after such date Buyer gives Keith written notice that the products do not conform to the specifications of the Keith quote (as may be mutually amended in writing by change order) and specifies in detail the reasons therefore. Keith may then, at its sole election, undertake to make such corrections as it determines are required, if any, to conform the products to spec, in which case such corrective action by Keith shall be Buyer's sole remedy for non-acceptance of product. Upon completion and acceptance of such corrections, the products will be deemed accepted by Buyer. No testing, other acceptance procedure(s), performance or production standards are included in or covered by the Keith quote, unless expressly so stated, and for which Buyer has paid in full in advance.

10. FORCE MAJEURE: Delay in or failure to carry out the duties imposed upon either party (except Buyer's duty to make payment to Keith) under this agreement shall not constitute default

hereunder or give rise to any claim for damages if such delay or failure results directly or indirectly from acts of God, acts of any civil or military authority, civil disturbances, war, strikes or other labor disputes, shortages of labor or materials, fire, transportation contingencies, laws, regulations, acts or orders of any government or agency or official thereof, other catastrophes or any other similar occurrences beyond such party's reasonable control, all of the aforesaid being herein for convenience referred to as "events of force majeure". Force majeure delays shall also extend the estimated delivery date on a day by day basis.

11. PATENT & COPYRIGHT

INDEMNIFICATION: Buyer shall at its own expense defend any suit or proceeding brought against Keith insofar as such suit or proceeding is based upon a claim of infringement of any United States or Foreign Patent or Copyright covering the products, services, operations, computer programs or other works provided by Keith under this Agreement to meet particular design or function specifications provided by Buyer to Keith, and for any operations by Buyer of any equipment provided by Keith under this contract or quote. Keith shall notify Buyer in writing of any such suit or proceeding promptly upon Keith's learning of such suit or proceeding, and shall provide Buyer, at no cost, with such reasonable assistance and cooperation as in Keith's sole judgment Buyer may reasonably need in the defense thereof. Additional assistance that does not impact Keith's ability to do business will be provided at Keith's standard rates, and must be prepaid by Buyer. Buyer shall have sole control over any such suit or proceeding, provided that Keith may participate in such defense at its own cost.

12. CONSEQUENTIAL DAMAGES:

Notwithstanding anything in this Agreement to the contrary, Keith shall have no liability whether arising in contract, tort, or otherwise, for loss of capital, loss of product, lowered production, loss of profit, loss of use, loss of power, power outages, cost of replacement power or any indirect, special, incidental or consequential damages.

13. LIMITED WARRANTIES:

A) Keith warrants to Buyer that all products manufactured and services provided by Keith will be free from defects in material and workmanship for a period of ninety (90) days from the date of delivery, FOB Keith plant. Keith's obligation for the service of refractories or other component parts

manufactured by any company other than Keith but incorporated into equipment sold by Keith shall be limited to the warranty of the original manufacturer or supplier.

B) In the event that Keith received written notice of a breach of the above warranty within the warranty period and within ten (10) days after the discovery of such breach, then Keith shall, at its sole option, either replace or repair at Keith's factory or in the field such product(s) or component(s) that are determined by Keith to be defective in materials and/or workmanship. Product(s) replaced or repaired during the warranty period shall not carry a new warranty, but instead shall carry the unexpired portion of the original product or component warranty. Buyer must obtain Keith's written authorization prior to returning product(s) or component(s) to Keith. All products returned to Keith for repair or replacement must be sent by Buyer freight prepaid to Keith's factory and will be returned to Buyer freight prepaid. Warranty work that is performed at the job site will be performed on an eight (8) hour straight-time basis only, unless buyer agrees in writing to pay Keith the differential for overtime hours. Keith's obligations under this warranty are conditioned upon timely receipt of all payments in strict accordance with payment terms, time being of the essence in this regard. During any period in which any payment due Keith from Buyer is late, Keith shall have no warranty obligation to Buyer.

C) In the event that any product returned by Buyer to Keith for warranty service is determined by Keith not to be defective in materials or workmanship, Buyer shall reimburse Keith for all related shipping, inspection, testing, analysis, evaluation, return or restocking costs incurred by Keith pursuant to Section B above, and shall pay to Keith an amount equal to Keith's standard service charge in effect at that time applicable to erroneous warranty claims

D) The warranty set forth in Section A hereof does not apply to any product altered by Buyer or any third party, or to any effects of Buyer's operation of the equipment, including but not limited to normal, inherent or reasonable corrosion, erosion or wear and tear of heating equipment or materials under Buyer's actual circumstances of use which it must fully disclose to Keith, nor does it cover failure of equipment or material due to damage in shipment or damage or failure resulting in whole or in part from improper or not previously disclosed use or negligence of



KEITH STANDARD TERMS AND CONDITIONS OF SALE

Page 3 of 3

Buyer or any third party, or conditions of service more severe than normal or different from uses set forth in Buyer's disclosure to Keith prior to Keith quote.

E) Keith's repair or replacement obligation under Section B above shall be Buyer's sole and exclusive remedy for a breach of the warranty set forth in Section A above. Such warranty is the sole warranty made by Keith with respect to any product or service purchased by or provided to Buyer pursuant to this Agreement and is in lieu of all other warranties by Keith expressed or implied, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose.

F) The limited warranties of Keith apply only to equipment (and related services) for which Keith has been paid in full. The limited warranties of Keith do not extend to, and Keith does not guarantee: a) the installation and configuration of the equipment; b) modes of use or control of the equipment; c) process(es) carried out in or by the equipment; d) the quality, quantity or nature of product produced in the equipment; e) Buyer or third party designed, managed, controlled or staffed operations of the equipment; or f) equipment or its operation with consumables, equipment, systems, parts, or devices not included in the Keith Quote. Buyer warrants and represents that it has independently determined the suitability of Keith equipment provided under this and related contracts for the uses, processes and products to or for which Buyer operates and intends to operate the equipment. Keith has relied on information provided by Buyer to prepare sales proposal(s) and technical specifications in the Keith Quote, and for Keith to determine the physical properties, capacity ratings, and projected performance relating to the equipment as set forth in this purchase order Agreement. Buyer understands and agrees that Keith's reliance on Buyer information is reasonable, and warrants that the information presented to Keith was reliable in all respects. Buyer understands and agrees that due to process variables and conditions beyond Keith's knowledge and control, Keith will not warrant or guarantee the products as to fitness for a particular purpose, nor that it will achieve particular or intended process, production or product results. Any post-Quote variance by Buyer in the process or its nature or conditions of operation from specific information

provided by Buyer on which Keith based its Quote terminates all warranties. Installation and acceptance testing, either at Keith or Buyer's facility, is not included in the Quote unless expressly so stated. Any testing agreed-to is to verify only the operability of the equipment, and is not a test of process operations, performance or product amount or quality. Any terms or conditions in any Buyer order purporting to be a standard of performance or other operational parameter(s) as a condition that must be met before acceptance and/or payment in full for of Keith's products ordered or services performed, are not included in or covered by the Keith Quote or the warranties. Any performance criteria must be clearly and completely set forth in a Separate written agreement entitled *Performance Agreement*, which has separate and distinct terms and warranties, is priced separately and must be signed by an authorized representative of the Buyer and Seller company to become binding.

14. LIMITATIONS OF LIABILITY: In no event shall Keith's liability to Buyer arising out of or relating to the sale of any product or service pursuant to this Agreement, exceed the purchase price paid by Buyer to Keith for such product or service.

15. TERMINATION: Buyer may not terminate this Agreement except by giving Keith fifteen (15) days prior written notice. In the event of termination, Buyer and Keith shall be relieved of all further obligations hereunder except Buyer's obligation to pay Keith the total of Keith's costs incurred as of the date of termination and total expected profit under the Agreement, including, without limitation, all costs, expenses and liabilities, (including cancellation charges) incurred by Keith as a result of such termination, plus costs incurred in the orderly shutting down of the work, plus any amounts withheld by Buyer to settle claims against or to pay indebtedness of Keith in accordance with terms of this Agreement, less payments already made to Keith.

16. WAIVERS: No waiver of any provision of this Agreement or any rights or obligations of either party hereunder shall be effective, except pursuant to a written instrument signed by the party or parties expressly waiving compliance. Any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. Buyer's issuance of a PO with terms and conditions different than the Keith



KEITH STANDARD TERMS AND CONDITIONS OF SALE

Page 4 of 4

terms and conditions, and Keith's subsequent performance is not a waiver

17. GOVERNING LAW & COMPLIANCE:

This Agreement shall be governed and construed in accordance with the laws of the State of California and the exclusive forums for the resolution of any disputes hereunder shall be California state courts in the County of Los Angeles or federal district courts in the Central District of California.

18. ATTORNEY FEES AND EXPENSES:

In addition to other remedies provided by the California Uniform Commercial Code or otherwise, the party aggrieved by any breach where settlement is made through negotiations, or the prevailing party in any litigation resulting from the breach, will be entitled to reasonable attorney's fees plus expenses and court expenses.

19. SEVERABILITY OF PROVISIONS:

In the event that any provisions hereof are held invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER SUCH PROVISION AND TO BE ENFORCED AS SUCH. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED ITS ESSENTIAL PURPOSE, ALL LIMITATIONS AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.**