

# KIMASTLE CORPORATION STANDARD TERMS AND CONDITIONS OF SALE

**General:** Kimastle Corporation (Kimastle) Standard Terms and Conditions of Sale apply to all Products and/or services (collectively "Products") sold by Kimastle (Seller) and are incorporated by reference into each and every quote and acknowledgment issued by Kimastle. By purchasing Products from Kimastle, Purchaser acknowledges and agrees that it has read, understands, and agrees to be bound by these Standard Terms and Conditions of Sale.

## **Price:**

Prices in a quotation are subject to change after thirty (30) days if not accepted. Except where otherwise prohibited by law, all applicable sales, excise, use, or similar taxes or charges for the sale of Products will be in addition to the stated price and paid by Purchaser. Whether before or after acceptance Kimastle reserves the right to increase any price in the event of increased costs beyond Kimastle's reasonable control, including, without limitation, (a) raw material costs, (b) modifications to specifications requested by Purchaser, or (c) price of goods manufactured by others and re-sold by Kimastle.

## **Terms of Payment:**

Notwithstanding anything contained herein, payment shall be due in accordance with the terms of Kimastle's invoice. An invoice shall be generated pursuant to the terms of payment under the Contract and after Kimastle has contacted and arranged for shipment with a common carrier. The day of pickup by a common carrier after contact by Kimastle varies depending on the delivery location and the common carrier to be used. Accordingly, the invoice date shall be the date the invoice is generated by Kimastle and may not be the same date as the date the Products are transferred to the common carrier, and the bill of lading is signed.

## **Delivery and Transportation:**

All transportation, insurance, customs, import/export, and handling operations are the responsibility of Purchaser and are to be at Purchaser's expense and risk. Risk of loss of the Products shall transfer to Purchaser upon delivery of the Products to the carrier. Delivery time frames do not include holidays.

## **Warranties:**

The workmanship, design, and machined components on this equipment are warranted to conform to the applicable specifications and to be free from defects in workmanship and materials for a period of two years after delivery. Kimastle will transfer ownership and good title to the Products free and clear of liens and rights of third parties. **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL IMPLIED WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.**

**Limited Remedies:**

Any warranty claims by Purchaser shall be promptly communicated to Kimastle in writing. Failure by Purchaser to give written notice of claim within the two year warranty period shall be deemed an absolute and unconditional waiver of Purchaser's warranty claim. Purchaser's sole and exclusive remedy for a valid warranty claim is either repair or replacement of the Products or a full refund of the price paid by Purchaser for the Products (which remedy shall be selected by Kimastle in its sole discretion). The remedy does not include the cost of installation, removal, dismantling, or reinstallation. Purchaser will provide Kimastle with access to all available warranty data and the Products. Purchaser will also provide Kimastle with an opportunity to participate in all root cause analyses performed by Purchaser concerning the Products. Kimastle shall have no liability to the extent Products are or have been: (a) modified by Purchaser or a third party; (b) modified by Kimastle at Purchaser's request; (c) made to specifications not provided by Kimastle; (d) used or installed in a way not known to Kimastle or operated under conditions not known to Kimastle; or (e) subject to misuse, abuse or improper storage, installation or maintenance.

**Limitation of Liability:**

**NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EXCEPT FOR BREACH OF OBLIGATIONS OF CONFIDENTIALITY OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY, KIMASTLE SHALL NOT BE LIABLE TO THE PURCHASER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING FROM OR RELATING TO THE OBLIGATIONS UNDER THIS CONTRACT. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE, AND COST OF CAPITAL. NEITHER PARTY MAY BRING ANY ACTION, REGARDLESS OF FORM, ARISING OUT OF TRANSACTIONS UNDER THE CONTRACT, MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED. EXCEPT FOR PERSONAL INJURY OR DEATH DUE TO KIMASTLE'S INTENTIONAL MISCONDUCT, the parties agree that the total damages that can be awarded in any claim by PURCHASER relating to KIMASTLE's obligations under this CONTRACT (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE), shall not exceed the combined total of amounts paid by PURCHASER to KIMASTLE under the CONTRACT. THE PARTIES EXPRESSLY AGREE THAT THE ABOVE LIMITATIONS ON LIABILITY PROVISIONS SHALL REMAIN IN FULL FORCE AND EFFECT EVEN IF IT IS FOUND THAT THE PURCHASER'S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.**

Kimastle shall not be liable or responsible for any damages arising out of any injury in shipment, faulty installation, adjustments or repairs, exposure to excessive pressure, temperature or harmful chemicals, or improper application or misuse or abuse of said Products or parts and/or negligence of others.

**Drawings:**

All drawings will be supplied electronically and must be approved in writing by Purchaser's engineer before the build can begin.

**Multiple Products:**

If multiple Products are listed as an "EACH" and price and quantities are reduced and/or canceled, additional charges will apply. Production penalty terms are not a condition of this quotation.

**Modifications and Delays:**

(1) Kimastle reserves the right to modify or change portions of this quotation should any of the assumptions specified be determined to be incorrect or if new/additional information relative to this quotation becomes available. All program sequence requirements must be provided at the design stage prior to the writing of the program. If changes are requested after the program is written, it will be considered subject to additional charges and costs.

(2) If materials are changed from those originally contemplated, possible price increases may occur. These will be evaluated on an individual basis.

(3) Adequate production quality parts must be provided for machine tuning or initial set-up; any additional tuning and/or further set-up support will be subject to additional charges and travel costs.

(4) The Purchaser must provide continuous access to equipment during set-up. Purchaser caused delays in set-up, causing timing overruns from the quoted set-up days/hours will be subject to additional charges and costs. If timing is lengthened due to Purchaser or part changes, additional charges and costs shall apply.

**Ultrasonic and Leak Testing:**

Production level parts must be supplied by Purchaser for Ultrasonic and Leak Test suppliers before actual cycle times and feasibility can be established. Estimated "approximate" cycle times can go up or down based on the production part evaluation. Any additional tooling or hardware that may be required is to be the sole responsibility of the Purchaser. Changes in equipment that are required because of cycle time changes are subject to additional charges.

**Production Penalties:**

Purchaser specified production penalties are specifically rejected.

**Programming Standards"**

The following Kimastle Programming Standards for HMI or Human Machine Interface are to be implemented if the Purchaser has not provided same at the time of quotation: Panel View 300: Manual Functions, Cycle Timers, Cycle Counter and Assembly Faults (i.e., Screw bad, Color fault, Clip Faults). Panel View 550/600: All of the above, plus I/O Screens and Motion Diagnostics (i.e., Platen did not extend I:1/16). Panel View 1000: All of the above, plus Graphic Displays (i.e., Heater Ring Graphics, Cylinder Graphics).

**Cancellation of Orders:**

All cancellations of orders must be in writing and agreed to in advance by Kimastle. Cancellation is subject to a cancellation charge equal to the actual costs incurred by Kimastle during the performance period of the Contract plus an additional 20% processing fee.

**Liens:**

In addition to any other rights Kimastle may have under the Contract, Kimastle reserves the right to place liens on any Products.

**Plant Visits:**

Any visits to the Purchaser's facilities for work outside the warranty period and/or not covered by Kimastle's warranty and/or for work beyond the initial set-up shall be subject to additional charges and costs as contained in Kimastle's Quotation.

**Vision Systems:**

For camera sensing, actual production quality parts must be used to accurately set-up the cameras. Final set-up of the cameras can only be achieved when all manufacturing process variables are provided by the Purchaser and known to Kimastle. Production level parts are required for the Vision System suppliers before feasibility can be established. Kimastle's responsibility only pertains to mounting, wiring, and initial programming of the cameras. It is the Purchaser's responsibility to maintain and adjust the cameras throughout the life of a program. Additional programming after initial set-up, including modifications and/or tune-ups by Kimastle personnel, are subject to additional charges.

**Color Sensors:**

For color sensors, actual production quality parts must be used to accurately set-up the color sensors. Final set-up of the color sensors can only be achieved when all of the manufacturing process variables are provided by Purchaser and known to Kimastle. Kimastle's responsibility only pertains to mounting, wiring, and initial programming of the color sensors. It is the Purchaser's responsibility to maintain and adjust color sensors throughout the life of a program. Additional programming after initial set-up, including modifications and/or tune-ups by Kimastle personnel, are subject to additional charges.

**Payment late charges, certain remedies, and recovery of expenses:**

All payments are due pursuant to the terms of Kimastle's invoice and shall be paid in \$U.S. Purchaser will pay a charge equal to the lesser of (i) the highest rate allowable by law or (ii) 1.5% per month (18% per annum) of the unpaid balance with respect to any late payments. In addition, Purchaser will pay all costs and expenses incurred by Kimastle, including actual attorneys fees, which were incurred in connection with enforcing the Contract and/or collecting any past due payments. Kimastle shall have the right of set-off in the event Purchaser fails to make any payment when due, the right to terminate the Contract and/or the right to suspend further deliveries under the Contract and/or other agreements with Purchaser, the right to recover damages in addition to any other remedies available to Kimastle as a matter of law.. Kimastle may require full or partial payment in advance of shipment if, in Kimastle's opinion, the credit or financial

condition of Purchaser is or is about to become impaired. If Purchaser requests delayed shipment, Kimastle may bill for Products when ready for shipment and charge reasonable daily storage fees. Purchaser shall not have any right of set-off against Kimastle.

The remedies available to Kimastle for Purchaser's breach are intended to be as flexible as permissible and cumulative to the fullest extent permissible, and no choice of any one or more remedies is intended to constitute an election of remedies which would limit the ability to assert other remedies.

**Shipping and Delivery Delays:**

Kimastle shall not be liable for delays or failure in performance when caused by circumstances beyond Kimastle's reasonable control. If Purchaser does not provide shipping and routing instructions, Kimastle shall be the sole judge of the best method of routing shipment. All sales of Products are F.O.B. Kimastle's plant.

**Rejections and Returns:**

Purchaser will be deemed to have inspected and accepted all delivered Products unless written notice of rejection, specifying the basis, therefore in reasonable detail, is provided to Kimastle within 10 days after delivery. Purchaser may not return Products that have not been timely rejected without Kimastle's prior written approval.

**Infringement Claims:**

Kimastle shall defend, at its sole expense, any third party claim, demand, or suit against Purchaser ("Claim") alleging that the use of any Product, as authorized by Kimastle, infringes a third party's U.S. patent, and shall indemnify Purchaser against any and all losses awarded or assessed against Purchaser in connection with the Claim, or reached through a negotiated settlement of the Claim; provided, that (a) the alleged infringement does not arise from Kimastle's compliance with specifications or designs furnished by Purchaser; and (b) Kimastle receives prompt written notice of such Claim and exclusive control over the defense and/or settlement of the Claim; and (c) Purchaser provides Kimastle with all information available to Purchaser for the defense and cooperates with Kimastle in the defense, and does not take a position adverse to Kimastle. Further, Kimastle will have no liability under this Section if and to the extent that a claim of infringement is based on (1) a Product modification made by Purchaser or a third party, or made by Kimastle at Purchaser's request, (2) use of interconnection by Purchaser of the Product in combination with other products not made or sourced by Kimastle, or (3) Products made to design or specifications not provided by Kimastle.

Except for third party claims described above, and subject to the limitations above, Kimastle's exclusive obligation to Purchaser as to Products declared to infringe, and Purchaser's rights as to Products which it reasonably believes are likely to infringe, is the procurement of a license for Purchaser, the replacement of Products with non-infringing goods, the modification of the Products so that they are non-infringing, or the return of the purchase price for the Products, as Kimastle may elect in its sole discretion. **THIS SECTION STATES KIMASTLE'S ENTIRE OBLIGATIONS REGARDING PATENT INFRINGEMENT AND THE PURCHASER'S EXCLUSIVE REMEDIES AGAINST**

**KIMASTLE WITH RESPECT TO THE PRODUCTS, AND THE PURCHASER WAIVES ALL OTHER RIGHTS AND REMEDIES.**

**Ownership of Proprietary Materials:**

(a) Purchaser's Intellectual Property. The Parties acknowledge that the Contract does not transfer to Kimastle any patent, trade secret, trademark, service mark, copyright, mask work, background intellectual property or other intellectual property rights (collectively, "Intellectual Property Rights") of Purchaser or Purchaser's customers that Purchaser makes available to Kimastle, or to which Kimastle has access to, under the Contract, other than the right to use the Intellectual Property Rights strictly and solely in conjunction with Kimastle's design, manufacture, sale and/or repair of any Products for Purchaser. To the extent that Purchaser's Intellectual Property Rights are subsisting or embodied in or used in connection with the Products, Purchaser hereby grants to Kimastle a perpetual, paid-up, royalty-free, non-exclusive, worldwide, revocable license to all Purchaser's Intellectual Property Rights subsisting or embodied in or used in connection with the Products strictly and solely in connection with the Kimastle's design, manufacture sale and/or repair of the Products.

(b) Kimastle's Intellectual Property. The Parties acknowledge that the Contract does not transfer to Purchaser any patent, trade secret, trademark, service mark, copyright, mask work, any other intellectual property rights, know-how, background intellectual property, or technical information (collectively, "Intellectual Property Rights") of Kimastle or Kimastle's suppliers. Kimastle hereby grants to Purchaser and its affiliates a perpetual, paid-up, royalty-free, non-exclusive, worldwide, revocable license to all Kimastle's Intellectual Property Rights subsisting or embodied in or used in connection with the Products strictly and solely in connection with the Purchaser's use of the Products.

**Compliance with Law:**

The parties shall comply with all applicable federal, state, local and foreign laws, orders, rules, regulations, and ordinances.

**Indemnification:**

As used in this Section, a "Claim" is any claim, demand, loss, damage, liability, cost, or expense (including professional fees and costs as incurred) for which one party may be obligated to defend, indemnify and hold the other party harmless.

Purchaser agrees and shall indemnify and hold Kimastle harmless from and against any and all Claims as incurred, arising out of or in connection with Kimastle's contract with Purchaser including, but not limited to: (1) Kimastle's use of Purchaser's products or services, (2) Kimastle's use of information or materials provided to Kimastle by Purchaser, or (3) Claims arising out of the negligent or willful acts or omissions of the Purchaser which results in personal injury (including death) or damage to property.

Nothing in this Section shall limit any other remedies of Kimastle.

**Confidentiality:**

If the parties have entered into a Confidentiality or Non-Disclosure Agreement ("NDA"), the terms and conditions of the NDA shall apply and control for confidentiality obligations between the parties. In connection with the Contract between Kimastle and Purchaser, Purchaser may have access to Kimastle's confidential information, including, without limitation, inventions, developments, know-how, specifications, business plans, results of testing, systems, financial information, product information, methods of operation, customer information, supplier information and compilations of data ("Kimastle's Confidential Information"). Purchaser shall use Kimastle's Confidential Information only for the purposes contemplated under the Contract and shall not disclose it to third parties. Purchaser shall maintain the confidentiality of Kimastle's Confidential Information in the same manner but in no event less than the manner in which it protects its own confidential information. Purchaser is permitted to disclose Kimastle's Confidential Information to its employees and authorized subcontractors on a need to know basis only, provided that such employees and authorized subcontractors have written confidentiality obligations to Purchaser no less stringent than the confidentiality obligations under this Section. Upon termination of the Contract, Purchaser shall return Kimastle's Confidential Information and shall not use Kimastle's Confidential Information for its own, or any third party's, benefit. Purchaser's confidentiality obligations shall survive termination of the Contract for so long as Kimastle's Confidential Information remains confidential. In order to assure that Kimastle is able to obtain the full benefit of the restrictions set forth in this Section, Kimastle shall be entitled to injunctive relief, including, but not limited to, emergency, preliminary, temporary, and permanent injunctions, from any court of competent jurisdiction as may be necessary to enjoin any violation of the foregoing covenants, without the necessity of proving immediate irreparable harm or an inadequate remedy at law.

**Relationship:**

Purchaser and Kimastle are independent contractors who are purchasing and selling Products, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has the authority to assume or to create any obligation on behalf of the other party.

**Termination by Kimastle:**

In addition to any other rights of Kimastle to terminate the Contract or suspend performance under the Contract, Kimastle may, upon written notice to Purchaser, immediately terminate all or any part of the Contract or suspend performance under the Contract, without any liability to Purchaser and without waiving its right to damages, (a) if Purchaser (i) repudiates, breaches, or threatens to breach any of the terms of the Contract, (ii) fails to accept or threatens not to accept Products in accordance with the Contract, or (iii) fails to make timely payment, or (b) upon the occurrence or threat of insolvency or bankruptcy of Purchaser. Upon termination of the Contract by Kimastle: (A) Kimastle shall be relieved of any further obligation to Purchaser; (B) Purchaser shall be liable to Kimastle for the immediate payment of amounts then billed to date by Kimastle to Purchaser; (C) Purchaser shall purchase and pay Kimastle immediately for all unique raw materials, work in process and finished goods under the Contract; (D) Purchaser shall

reimburse Purchaser for any unreimbursed and unamortized research and development costs, capital equipment, and supplies that are unique to the Products; and (E) Purchaser shall immediately reimburse Kimastle for all preparation and other expenses incurred by Purchaser or its subcontractors in connection with the Contract and for all other losses or costs arising from termination.

**Termination by Purchaser:**

If Kimastle fails to perform any obligation under the Contract and, if the non-performance can be cured and Kimastle fails to cure the non-performance within thirty (30) business days after written notice from Purchaser, Purchaser may terminate the Contract upon giving written notice to Kimastle not less than ninety (90) days prior to shipment. In the event that Purchaser cancels any purchase order under the Contract, (a) Kimastle shall be relieved of any further obligation to Purchaser, (b) Purchaser shall pay all amounts then due, (c) Purchaser shall purchase and pay Kimastle immediately for all unique raw materials, work in process and finished goods under the Contract, (d) Purchaser shall reimburse Kimastle for any unreimbursed and unamortized research and development costs, capital equipment, and supplies that are unique to the Products.

**Force Majeure:**

Neither party shall be liable if its performance is delayed or made impossible or commercially impracticable due to acts of God, war, riot, fire, labor trouble, unavailability of materials or components, explosion, breakdown or accident, delay in transportation, plant shutdown, compliance with governmental requests, laws, regulations, orders or actions, unforeseen circumstances, pandemics or causes beyond such party's reasonable control.

**Governing Law, Jurisdiction and Venue:**

The Contract shall be governed by and construed in accordance with the laws of the State of Michigan without reference to the choice of law principles thereof. Each party irrevocably submits to the jurisdiction of the Courts of the State of Michigan, County of Macomb, and the United States District Court for the Eastern District of Michigan and hereby waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding.

**Assignment, Waiver, Entire Agreement, Severability:**

Purchaser may not assign or delegate any of its rights or obligations under the Contract without prior written consent from Kimastle. Kimastle may terminate the Contract upon giving at least sixty (60) days written notice to Purchaser, without any liability to Kimastle, if there is a change of control of Purchaser. Kimastle may assign its rights and obligations under the Contract at any time, without Purchaser's prior written consent. Except as provided herein, the failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

Kimastle's Quotation and these Standard Terms and Conditions of Sale constitute the entire Contract between Kimastle and Purchaser with respect to its subject matter and



supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract. Purchaser's issuance of either a Purchase Order or an acceptance shall constitute an acceptance of Kimastle's Quotation and these Standard Terms and Conditions of Sale. Any additional terms or modifications to Kimastle's Quotation and these Standard Terms and Conditions of Sale, whether in a purchase order or otherwise, are expressly rejected by Kimastle and are not part of the Contract between Kimastle and Purchaser. This Contract may not be modified unless in writing and signed by authorized representatives of both parties. Any provision found invalid or unenforceable will not affect the validity or enforceability of any other provision, and the invalid provision may be judicially modified to the extent necessary to make it enforceable.

**U.S. Foreign Trade Controls Compliance:**

Purchaser understands and agrees that Products and any technical data or services provided hereunder may be subject to export and other foreign trade controls restricting resales and/or transfers to other countries and parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States. Any other provision of this Contract to the contrary notwithstanding, Purchaser agrees that no Products, technical data, or services provided hereunder will be sold, re-exported, or transmitted except in full compliance with all relevant governmental laws and regulations including U.S. foreign trade controls requirements. Purchaser agrees to and does assume all responsibility for obtaining any required licenses related to the export or re-export of the Products, technical data or services, including any licenses for their export from the United States and their import into any other country.

Purchaser further agrees that it will not export or re-export any of the Products, technical data, or services of U.S. origin or containing U.S. content provided hereunder to any country, government, person, entity, organization, or end-user subject to U.S. foreign trade restrictions and, in particular, that it will not export or re-export the Products, technical data or services to:

- (i) any country to which such goods, data or services may not be transmitted without prior specific authorization of the Directorate of Defense Trade Controls, U.S. Department of State, pursuant to the International Traffic in Arms Regulations (22 C.F.R. Parts 120 through 130); or
- (ii) any country to which such goods or data may not be transmitted without prior specific authorizations of the Bureau of Industry and Security, U.S. Department of Commerce, pursuant to the Export Administration Regulations (15 C.F.R. Parts 730 through 774); or
- (iii) any country, government, person, entity, organization or end-user against which the United States government has imposed any other foreign trade restrictions, including, without limitation, economic sanctions or an economic embargo or the denial of export privileges.

Any violation of this Section, as determined solely by Kimastle, shall be deemed a material breach of this Contract and Kimastle may terminate any and all of its obligations under this Contract.

**Notices:**

Any notice required or desired to be served pursuant to this Contract shall be delivered by U.S. First Class Certified Mail, Return Receipt Requested, overnight bonded courier; or facsimile or email provided it is followed by hard copy mailed or couriered within 48 hours.

- (i) in the case of notices to Kimastle; at 28291 Kehrig Drive, Chesterfield, Michigan 48047, USA.
- (ii) in the case of notices to the Purchaser at the address, facsimile number from which the Products were ordered or if the Purchaser is a company at its registered office;  
or
- (iii) in the case of notices to either party at such other address and/or facsimile number as it shall notify the other in writing.

Any notice sent by post or courier aforesaid within and to destinations in the United States shall be deemed to have been received two days after the date of its dispatch, subject to proof of actual delivery, and any notice sent by facsimile or email shall be deemed received at 9 a.m. on the business day (Saturdays, Sundays and public holidays excluded) after the dispatch of the same.

**Set-Off and Counterclaim:**

The Purchaser may not withhold payment of or make any deduction from any invoice or other amount due to Kimastle by reason of any right of set-off or counterclaim which the Purchaser may have or allege to have or for any reason whatsoever.

**Severability:**

If any provision of these Standard Terms and Conditions of Sale is or becomes illegal, void, or invalid, that shall not affect the legality and validity of the other provisions.

**Coordination:**

In the event of any conflict between the provisions contained in the quotation or acknowledgment and those contained in the Kimastle Corporation Standard Terms and Conditions of Sale, the provisions contained in the quotation or acknowledgment shall control.