

General Terms & Conditions of Business KMS Technologies - KJT Enterprises, Inc. Version 4.8

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I. Validity of these terms and conditions

Here, we specify when the rules are applicable. Please save the version from the date of your quotation/estimate.

1. Subject to any deviating agreements in individual cases, contracts may only be concluded with KJT Enterprises, Inc. – KMS Technologies (KMS) in accordance with the following provisions: When placing an order the customer (Customer) declares he agrees to these terms and conditions as set forth herein. Any changes to these Terms and Conditions made by the Customer, whether expressed in a written work order or similar document or verbally shall not be binding unless expressly agreed in writing. The Terms and Conditions shall apply for services and hardware sales without reservation in knowledge of contrary or deviating conditions on the part of the customer.
2. The Terms and Conditions shall apply for all services and hardware sales and for all duties arising from the obligation towards the Customer.

II. Conclusion of contract

1. After KMS accepts a work order, it is assumed that a contract with KMS is made according to the terms set forth therein subject to these Terms and Conditions. Such contract shall be considered valid and binding on the parties only when the Customer has accepted the offer without reservation or KMS send out a written acknowledgement of the order, or KMS commence performance of the services contemplated in the statement of work. If KMS issue a written acknowledgement of an order this shall determine the content and scope of the contract where nothing different has been expressly agreed. If no acknowledgement is provided by KMS, the work order is accepted with the Customer signature. Reply time frame is usual within 5 business days.

2. Any **changes, ancillary agreements and additions**, and any agreements on quality or the assumption of warranties must be expressly confirmed by KMS in order to be effective; this must be done in writing. This also applies with respect to cancellation of the present clause.

III. Performance of order and Customer's obligations to cooperate

1. Provided nothing different has been expressly agreed, KMS shall only be obliged to render the exact services provided for in the contract. KMS shall render such services according to the generally accepted technical rules and standards and the statutory specifications related to such services.
2. For any damage to or destruction of Customer's objects due to the proper performance of the service, KMS shall not be obliged to provide a compensation or replacement. If, as a consequence of or on the occasion of the proper performance of the service, KMS own equipment is damaged or destroyed or lost for reasons not attributable to KMS, KMS shall be entitled to demand of the Customer compensation or replacement. Transport and, where relevant, return of Customer's objects, shall be implemented at the Customer's expense and risk, but return shall only be implemented at the Customer's express request. Where objects are retained by KMS, the liability shall be limited to the duty to exercise due care and attention.
3. The Customer shall inform us completely of all facts relevant to the performance of the service. KMS are basically not obliged to check that the data, information or other matters provided by the Customer are correct and complete where there is no specific reason to do so given the circumstances of the individual case or where the order does not expressly require this. KMS does not assume any guarantee for the correctness of the safety rules, regulations and programs on which the inspections/tests and appraisals are based, unless such rules, regulations or programs come from KMS or they are a subject of the inspection order. Nor does KMS bear any responsibility for the good order and functioning of the objects inspected with respect to technical safety where this is not expressly a subject of the work order.
4. Where the Customer must perform one or more actions of a cooperative nature to enable KMS to perform the service, he shall do this in good time and at his own expense; expenses will only be reimbursed if this has been expressly agreed; this must be done in writing. Where the Customer does not fulfill his obligation to cooperate does not do so in good time or does not do so in a proper fashion, KMS shall be entitled to charge him for the extra expense thus incurred. The right is reserved expressly to enforce any more extensive legal claims arising out of the Customer's failure to cooperate and act as required in the contract.
5. KMS is entitled to have any part of the services which KMS have to provide performed by a subcontractor who has been carefully sought out by KMS and who appears to KMS to be suitable.
6. If KMS work outside the corporate site the Customer shall be obliged to take all measures needed to ensure safety of movement where nothing different arises from the nature of the matter concerned or from an agreement with the Customer. KMS shall be entitled to refuse performance of the service as long as the necessary measures have not been taken.

7. KMS reserves the right to use the Customer's name and logo on KMS website, reports and other marketing materials with regard to these services.

IV. Periods and dates

1. Periods and dates shall always be taken as approximate where no binding agreement has been made in individual cases; this must be done in writing. Where such periods and dates are not binding, KMS shall only be in default if the Customer has previously set us a reasonable deadline in writing for performance of the service owed and such request has been fruitless. In any case periods set shall only commence with the complete performance of all actions of cooperation due from the customer and – where a down payment has been agreed – from the receipt of such payment. Any subsequent requests for changes or belated actions of cooperation on the part of the Customer shall mean an appropriate extension of the performance times.
2. If the service to be provided by us is delayed owing to unforeseeable circumstances which are not KMS fault (e.g. labor disputes, operational disturbances, transport hindrances, lack of raw materials, official measures – in each case also at KMS suppliers – and failure on the part of another party to deliver to us in due time), KMS shall be entitled to withdraw in whole or in part from the contract or at KMS discretion to postpone completion of the service by the length of time the hindrance lasts. KMS will notify the Customer without delay of the unavailability of the service or part of the service and reimburse him without delay for any counter-performance already provided if KMS withdraw from the contract. Claims for compensation are hereby excluded.
3. If the Customer delays acceptance or violates any other obligation to cooperate, KMS shall be entitled to demand compensation for any damage KMS may suffer, including any extra expenses incurred.
4. If KMS is in default for reasons attributable to KMS or if it is impossible to fulfill the service obligation for reasons, KMS may refuse to provide the service, KMS shall pay compensation Customer's sole remedy in such case shall be payments not to exceed the amount of any deposits made by the Customer.

V. Acceptance

1. Where KMS service requires acceptance, the Customer shall be obliged to do so as appropriate. Minor defects that do not seriously impair the suitability of the service for the purpose contractually laid down shall not entitle the Customer to refuse acceptance, without prejudice to his right to enforce statutory claims with respect to defects. In the case of part-services, which are, self-contained KMS may also demand part-acceptance.
2. If the Customer refuses acceptance while violating sub clause 1, acceptance is assumed.
3. Intellectual or advisory services are assumed accepted if the Customer, being an entrepreneur or legal entity, does not expressly lodge objections in writing with a concrete description of individual defects within 30 days of the receipt of such services. In the case of such objections KMS shall check the services. If an objection

lodged by the customer is found to be unjustified, he shall bear the extra expenses involved.

4. Point of delivery shall be a KMS facility. The Customer shall arrange for shipping privately. Whenever KMS is involved in the shipping arrangements, all the expenses and costs occurring thereof shall be borne by the customer. In case the goods are to be dispatched by parcel post/air freight, KMS shall inform the customer of the estimated date of delivery, contact No., commodity, invoiced value, etc. The customer shall arrange insurance.

VI. Prices and payments

1. The decisive criterion is the price quoted by KMS or otherwise the price usually charged for the service concerned, plus statutory value added tax where applicable. If KMS Customer is an entrepreneur or legal entity, KMS shall be entitled within the context of continuous obligations and long-term contracts to increase KMS prices to a reasonable extent where there is an increase in cost prices; if the Customer does not agree to such a price increase, he may terminate the contract within four weeks of the receipt of such an increase demand, otherwise the increase shall be deemed to be accepted. KMS invoices shall be due for payment without discount and free of charges in accordance with an agreed payments schedule, and otherwise within two weeks of receipt of the invoice. If checks are accepted in individual cases on the basis of express agreements, this shall only be done for the purpose of payment and also without discount. Any discount charges shall be borne by the Customer; KMS will only recognize checks as fulfillment of payment obligation when the relevant amounts have been credited without reservation to KMS account. KMS reserve the right to demand reasonable down payments and advances. Where, within the framework of the order placed with KMS, third party services are provided for or approved, KMS shall charge the customer for these in the amount invoiced to KMS plus a supplement handling fee of 15%.
2. Where no fixed price has been agreed and it is established during the performance of a service that the costs will exceed the amount quoted to the Customer as an estimate by more than 10%, KMS shall notify the Customer of this. The Customer shall be entitled in such a case to terminate the remainder of the contract. KMS shall then invoice only those services rendered up to that point. The same shall apply if KMS withdraw from further performance for cause or default by the Customer from the contract or the contract is cancelled in mutual agreement.
3. If KMS has a number of amounts receivable from the Customer, KMS shall determine against which debt the payment is to be set. The Customer shall only be entitled to offset if his counterclaims are established with legal effect, are undisputed or are acknowledged by KMS in writing. The same shall apply with respect to entrepreneurs or legal entities under public law for the enforcement of rights of retention.
5. If it becomes evident after conclusion of the contract that KMS claims towards the Customer are jeopardized by the Customer's inadequate ability to pay, KMS shall be entitled to agree to perform outstanding services only against advance payment or provision of security and to withdraw from the contract once a deadline set for this purpose has passed without result; number 2 sentence 3 of the present section shall apply accordingly.

6. In the case of default in payment the customer shall be liable to pay interest on arrears in the amount at the rate of 1.5% every 30 days with 5% for the initial 30-day period or the maximum amount provided for by law.
7. Unless otherwise agreed in writing, payment of 50% is due with all hardware orders and advisory services. Pre-payment shall be received by KMS prior to commencement of order processing. 40% is due prior to shipment or report delivery and the 10% balance is due 10 days after the shipment arrives at the country of destination.
8. Until the full payment has been received, title of any work product does not transfer to the Customer and remains property of KMS. If full payment is not received within 6 months after the last invoice date and no other arrangements have been done, the deliverable become full property of KMS.
9. If orders have been received but no down payment within 30 days, the order is automatically canceled. When the work on the order has started, a 10% restocking charge is due. This is also subject to interest. This applies to ALL KMS-KJT projects as our projects depend heavily on scientific work that gets re focused every time we add a project.
10. Payment must be made to the following bank or any other mentioned in the invoice:

Wells Fargo Bank N.A.
Hillcroft Business Banking
2824 Hillcroft St.
Houston TX 77057
Tel: 832-251-5518
Fax 832-251-5544
ABA Routing: 121000248 Swift code: [WFBIUS6SHOU](#)
Account No: 824 0187990
Account Name: KJT Enterprises, Inc – KMS Technologies

VII. Notice of defects and withdrawal

1. If KMS provide a defective service or product the Customer shall give us the opportunity to attempt at least twice to rectify the service or product within reasonable periods where this is not unreasonable in the individual case or there are no special circumstances which justify immediate withdrawal on the part of the Customer, taking into account the interests of both parties. KMS shall in any case have the choice between rectifying the defect and supplying a defect-free service or product within the agreed time. If the attempt to rectify fails, the Customer shall be entitled to reduce payment or withdraw from the contract; claims for compensation shall then only apply in accordance with section VIII. There shall, however, be no entitlement if the nonconformity in relation to the quality due is only minor.
2. Regardless of the cases described in sub clause 1, the Customer shall only be entitled to withdraw if KMS are responsible for the violation of obligation on the basis of which the withdrawal is to be explained.
3. KMS shall only assume a warranty for fulfillment of estimates or forecasts where this has been expressly agreed.

4. Issuance of a test certificate does not imply, beyond the specific content of the test report, any statement on the usability or quality of the item that has been tested. The same applies with regard to reports issued in the context of management system certifications.
5. If the Customer is an entrepreneur or legal entity under public law, claims regarding evident defects must be made without delay, in the case of concealed defects without delay after their discovery – but within the statutory warranty period.

VIII. Liability

1. KMS guarantees that the commodity sold is made of the best materials with first class workmanship, tested, and complies in all respects with the quality and specification stipulated in the Contract. The warranty period shall be 12 months counting from the date of acceptance of the goods or 15 months from the arrival of the commodity at the port of destination, whichever is sooner.

The same applies to refurbished goods. These are goods that were either used for testing, had minor repairs done or were sold before and not delivered.

2. Within 60 days after the arrival of the goods at destination, should the quality, specification, or quantity be found not in conformity with the stipulations of the contract except those claims for which the insurance company or the owners of the vessel are liable, the Customer shall, on the strength of a properly issued Inspection Certificate, have the right to claim for replacement with new goods, and the expenses of freight for returning the goods and for sending the replacement shall be borne by KMS. As regards quality, KMS shall guarantee that if, within 12 months from the date of arrival of the goods at destination, damages occur in the course of operation by reason of inferior quality, bad workmanship or the use of inferior materials, the Customer shall immediately notify KMS in writing and put forward a claim supported by a properly issued Inspection Certificate. The Certificate so issued shall be accepted as the base of a claim. KMS, in accordance with the customer's claim shall be responsible for repair of the product free of charge including both parts and labor.
3. KMS shall only be liable for restoration of data if the Customer has ensured that such data can be reconstructed from other data with a reasonable amount of effort. The Customer is in particular obliged to back up data and programs at intervals appropriate to the application on a regular basis, at least once a day, in machine-readable form and hence to guarantee that such data and programs can be restored with a reasonable amount of effort.

X. Copyright & intellectual property

KMS bases their technology on one of the largest patent portfolios in the EM industry. All of our work is copyrighted for the protection of IP. KMS does not extend its portfolio into the customer space unless agreed.

1. KMS's work delivered to Customer may not be passed on or used commercially beyond the purpose laid down by contract, and in particular it may not be published, reproduced or any derivative works made therefrom without prior written permission.

The Customer bears sole and exclusive responsibility for compliance with the statutory provisions applicable for the use of work (especially the provisions of copyright and competition law), and in particular he is responsible for the content of any advertising; he must indemnify us with respect to all and any claims by third parties and all necessary expenses these involve. Any such work product remains the sole property of KMS and Customer only is granted a right to use as set forth below.

2. Subject to any deviating agreements in individual cases, KMS grant the customer a simple right of use in each case of KMS services covered by copyright, where this is necessary for the contractually compliant use of the services, which are the subject of the contract.
3. By accepting our hardware or advisory services, Customer agrees no to infringe on our patents as they are published on our website.

XI. Place of performance and assignment

1. The place of performance for all services is a registered office of company.
2. Assignment or pledging of claims to which the Customer is entitled as a result of the business relationship with us is hereby excluded.

XII. Place of jurisdiction and applicable law

1. The place of jurisdiction for all claims arising from the business relationship with respect to entrepreneurs and legal entities under public law is a registered office of company. This also applies for claims from checks and for tortuous claims and third party notices. KMS is, however, also entitled to take action against the customer at his general jurisdiction.
2. In the case of cross-border services the registered office of the company shall be the exclusive legal venue for all disputes arising from the contractual relationship KMS reserve the right, however, to take legal action against the customer at his general legal venue or to engage any other court which is competent under the enforcement of judgments in civil and commercial matters.
3. For all business and legal relations between the customer and us the law of the State of Texas shall apply exclusively, without regard to their principles of conflicts of laws.

XIII. Signature & electronic signatures

1. This document requires a signature of an Officer of the company, the Legal counsel or an authorized signator.
2. These are: Officers: President and Secretary (Dr. K.M. Strack or H.K.Strack, J.D.)
Legal counsel (J.D.s): J.B. Flodine, R. Fagin, or H.K. Strack
Authorized signature: Engineering Manager (Z. (John) Jiang)
Chief Technology Officer (K. Strack)
Finance/Accounting Manager
3. Signature may be provide by manually, secure PDF signature or by adding '//s' to the signature line.

IX. Concluding provisions

1. If one or more of the foregoing conditions are or become ineffective this shall not affect the effectiveness of the other provisions herein. The ineffective conditions shall be replaced by such provisions as come closest to fulfilling the economic purpose of the contract and to preserving to a reasonable degree the mutual interests of the parties.
2. All earlier General Terms and Conditions are hereby superseded. The provisions are published in our Client & Associate sub web and in the project support sub web.

IX. Document control

This is a controlled document and under revision control only limited access is given on the website to PDF and word files.

KMS Technologies