



**Terms and Conditions of Purchase**  
**(Version: January 21, 2019)**

**1. Exclusive Terms and Conditions**

1.1 These terms and conditions are incorporated into and made a part of the agreement or proposal ("Agreement") by Kennametal Inc. or any of its subsidiaries, affiliates and unincorporated divisions ("Buyer") to buy from the named manufacturer, distributor, supplier or other seller (the "Seller") the goods ("Goods") and Services (the "Services") referenced on the face of this document.

1.2 The Agreement expressly limits Seller's acceptance to the terms of the Agreement, together with such plans, specifications, or other documents as are incorporated by reference on the face of the Agreement. The Seller shall not propose any terms or conditions in its acceptance that change, to any extent, the terms and conditions of this Agreement. Contrary provisions in Seller's quotations, acknowledgements, or any other document (including any document specifically incorporated herein in accordance with the paragraph titled "Entire Agreement, Survival of Obligations" below) that Seller sends in response to the Agreement, or has sent to Buyer to solicit the Agreement, are hereby rejected and are void, no matter whether Seller tenders to Buyer a paper form containing Seller's terms and conditions, whether Seller send Seller's terms and conditions to Buyer electronically via e-mail or any similar electronic medium, or whether Seller tenders Seller's terms and conditions to Buyer by any other means.

1.3 The terms and conditions of this Agreement constitute the complete and exclusive statement of the terms and conditions of the contract between the parties, supersede any conflicting terms in Seller's proposal, acknowledgement or written acceptance of this Agreement, and may be modified only by written instrument executed by both parties.

**2. Acceptance of the Agreement**

Seller will be deemed to have accepted the Agreement if Seller (a) expressly accepts it by transmitting to Buyer Seller's written or oral acknowledgement; (b) begins shipment of the Goods; (c) begins manufacture of the Goods, if they are to be specially manufactured for Buyer; or (d) begins performing Services.

**3. Order Number**

Seller must show purchase order number on all invoices, shipping papers, correspondence and containers.

**4. Invoices**

Seller must issue itemized invoices for Goods or Services provided pursuant to this Agreement. Invoice must include Buyer's purchase order and line item numbers.

## **5. Authorization**

Buyer shall not in any manner be responsible or obligated for any Goods or Services provided or work performed for Buyer's account except pursuant to this and other formal purchase orders.

## **6. Price**

6.1 The total price for the Goods and Services which are the subject of the purchase order shall not be higher than that appearing on the face of the purchase order or, if no price appears thereon, then no higher than that last quoted to Buyer from Seller for similar Goods or Services, or, if not previously quoted to Buyer from Seller, then no higher than the net price given by Seller to others for similar Goods or Services.

6.2 No charge will be allowed for packing, crating, freight, express or other carrier charges or cartage unless specifically set forth in the face of the purchase order.

6.3 The prices set forth in the purchase order include all applicable federal, state and local taxes.

## **7. Payment Terms**

7.1 Unless otherwise expressly stated on the face of the purchase order, the payment terms of this purchase order shall be 75 days from date of Seller's invoice.

7.2 Buyer shall be entitled to set off, recoup or withhold from any payment that may otherwise be due all sums as may be appropriate to mitigate, reduce or satisfy any damage, loss or diminution in value which arises out of any failure by Seller to timely and/or properly perform Seller's obligations under the Agreement. Any such set off, recoupment or withholding by Buyer shall not in any way compromise, reduce or waive any other remedies that may be available to Buyer.

## **8. Acceptance of Goods or Services**

Payment for Goods or Services delivered hereunder shall not constitute Buyer's acceptance thereof. Buyer shall have the right to inspect any Goods that are the subject of this Agreement within a reasonable time after delivery to Buyer and to reject any or all said Goods which are in Buyer's judgment defective or nonconforming to the description thereof in this Agreement.

## **9. Inspection**

9.1 All work (which term throughout includes without limitation raw materials, procedures and processes, components, intermediate assemblies and end products) shall be subject to inspection and test by Buyer, to the extent practicable always and places including the period of manufacture, and in any event prior to acceptance.

9.2 Seller is responsible for, and shall upon Buyer's request furnish evidence of, compliance with all requirements of the Agreement. Inspection and test by Buyer of any work, or approval of designs, drawings, samples, test results, procedures, processes or schedules by Buyer does not relieve Seller from any responsibility to meet the Agreement requirements.

9.3 The Buyer shall have free access, during reasonable hours, to any facilities or premises where work is being performed in conjunction with this Agreement.

## **10. Warranties**

10.1 In addition to any specific warranties or otherwise extended by Seller to Buyer, Seller warrants that all Goods and Services covered by this Agreement shall conform to the specifications, drawings, samples or other description upon which this Agreement is based, shall be fit for the purpose intended, merchantable, of good material, and workmanship and free from defect, and that Goods and Services of Seller's design will be free from defect in design. Inspection, test, acceptance or use of the Goods and Services furnished hereunder shall not affect the Seller's obligations under this warranty.

10.2 Seller further warrants to Buyer that neither the Goods and Services provided by Seller to Buyer, nor the uses which may be expected to be made of the Goods and Services by Buyer, violate or infringe any patent, copyright, mark, logo, trade secret or other intellectual property of or belonging to others.

10.3 These warranties shall run to Buyer, its successors, assigns and customers and users of the Goods or Services.

## **11. Defective or Non-Conforming Goods or Services**

In the event of Seller's delivery of defective or nonconforming Goods or Services, Buyer may, at its election and in addition to other rights or remedies available at law or equity: (a) return the Goods at Seller's risk and expense and recover from Seller the price paid therefore; (b) accept the Goods or Services and equitably reduce the price; (c) require Seller at its risk and expense to promptly replace or correct the defective materials or Services; or (d) obtain the Goods or Services from another source with any excess cost resulting therefrom chargeable to Seller.

## **12. Delivery: Time of Essence**

12.1 Time of delivery is of the essence of this Agreement. Seller shall ship and deliver all Goods in accordance with Buyer's instructions or, absent such instruction, in accordance with other commercially reasonable methods. Seller covenants and agrees to perform its obligations in strict accordance with all production and delivery schedules appearing on the face of this Agreement.

12.2 The due date noted on the purchase order is the date that the Good or Service must be received at the Buyer's location.

## **13. Delivery Instructions**

13.1 Seller shall ship the quantity specified on the purchase order. Any over-shipments or unauthorized shipments may be returned by the Buyer to the Seller at the Seller's expense.

13.2 Unless otherwise stated on the face of the purchase order, all Goods and Services are to be shipped and provided freight prepaid, FOB Destination.

13.3 When shipping Goods or items, Seller must provide a "packing list" with each shipment. The "packing list" must include the Buyer's purchase order number, purchase order line item number, description of item shipped and quantity of the item shipped.

#### **14. Title and Risk of Loss**

14.1 Unless otherwise specifically set forth on the face of Buyer's purchase order, all right, title and interest in and to the Goods which are the subject of this Agreement shall pass to Buyer upon inspection and acceptance by Buyer.

14.2 Seller shall bear the risk of loss for all Goods at all times prior to the passage of title to Buyer. Seller warrants that Good marketable title to all Goods shall pass to Buyer free and clear of any liens, encumbrances or charges, and Seller shall indemnify Buyer from and against all damage or loss, including attorney's fee, arising out of any breach of this warranty of title.

#### **15. Insurance**

Unless otherwise specifically set forth on the face of Buyer's purchase order, Seller will maintain worker's compensation insurance as prescribed by applicable law, employers liability, comprehensive general liability, including contractual liability and products liability, and automobile liability insurance in reasonable amounts covering Seller's business activities and the obligations of Seller under in this Agreement and, upon request, Seller will provide Kennametal with a Certificate of Insurance indicating the amount of such insurance.

#### **16. Changes**

16.1 Buyer reserves the right to make changes, including cancellations, in specifications and drawings, shipping instructions, quantities, and delivery schedules. If any such change causes an increase or decrease in cost of, or time required for performance of this Agreement, then an equitable adjustment shall be made in the price or the delivery schedule or both.

16.2 Any claims by Seller for adjustment must be made within 30 days of the date the change is ordered.

#### **17. Cancellation**

17.1 Buyer reserves the right to immediately cancel this Agreement, without liability, in the event of the happening of any the following: (a) insolvency of Seller; (b) the filing of a voluntary petition in bankruptcy by Seller; (c) the filing of an involuntary petition to have Seller declared bankrupt; (d) the appointment of a Receiver or Trustee for Seller; (e) the execution by Seller of an assignment for the benefit of creditors; (f) the taking of possession of any substantial part of Seller's property by any government agency; or (g) the suspension of Seller's usual business.

17.2 If Seller fails to perform as specified herein or fails to progress hereunder so as to endanger performance or if Seller breaches any of the terms hereof, Buyer reserves the right, without any liability, (i) to cancel this Agreement in whole or in part, by written notice to Seller and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach, or (ii) to obtain the Goods or Services ordered herein from another source with any excess cost resulting therefrom chargeable to Seller. Except as noted in the above paragraph, Buyer reserves the right to cancel this Agreement or any purchase order hereunder at any time for any reason upon thirty (30) days notice.

17.3 If Buyer elects to terminate under this clause, the Seller shall gather all reasonable costs incurred to date in performance of the purchase order and submit a termination claim to the Buyer within 60 days of the notice of termination. Upon a review of this claim, including a potential audit, Buyer will reimburse Seller for all reasonable costs incurred.

## **18. Force Majeure**

18.1 Buyer shall not be held responsible for acceptance of or payment for all or any part of Goods or Services tendered for delivery under this Agreement if, due to a "force majeure" event (including any federal, state or municipal action, statute, ordinance or regulation, strike or other labor trouble, act of God, fire, weather event or other incidents outside of a party's control), acceptance or payment is impossible or impractical.

18.2 Upon the occurrence of a force majeure event that affects Seller's ability to supply the total demand upon it or any Good, Seller shall allocate its available supply of such Good/Services (without obligation to purchase similar Goods from other sources) on a fair and equitable basis among Buyer and those other customers to whom Seller was contractually obligated to supply such Good/Services at the time the force majeure event arose.

18.3 In the event that such an allocation is commercially impracticable, Seller shall not be liable for any failure or delay of delivery if such failure or delay is caused solely by a force majeure event rendering timely performance by Seller impossible through no act or omission of Seller.

## **19. Indemnification**

19.1 Seller covenants and agrees to completely indemnify and hold Buyer harmless from and against any and all loss, damage (including attorney's fees and costs), claim or action, incurred or sustained by Buyer as a result of (a) any breach of any warranty arising out of this Agreement, (b) any breach of Seller's obligations under the purchase order; (c) property damage, personal injury or death, or any economic loss arising out of, or resulting in any way from, any defect in the Goods or Services purchased hereunder; (d) any actual or alleged infringement of patent or invention rights arising from the sale or use of the Goods or Services covered by this Agreement (provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses or expenses arising out of compliance by Seller with specifications furnished by Buyer); or (e) any willful misconduct or negligent act or omission of Seller, its agents, employees or subcontractors.

19.2 Seller acknowledges and agrees that the Goods and Services furnished by Seller to Buyer pursuant to this Agreement are intended for use by Buyer in fulfilling contractual obligations of Buyer to others.

19.3 In the event that a breach by Seller of its warranties or other obligations hereunder is a contributing cause or factor in any claim, action or proceeding against Buyer by others, Seller covenants and agrees to completely indemnify and hold Buyer harmless from and against any and all loss or damage (including attorney's fees and costs) incurred or sustained by Buyer as a result of such claims, actions or proceedings.

19.4 Buyer covenants and agrees to completely indemnify and hold Seller harmless from and against any and all loss, damage (including attorney's fees and costs), claim or action, incurred or sustained by Seller as a result of any infringement of patent, copyright, trade secret or other intellectual property rights of others by Seller's use of designs, processes or formulas supplied, determined or requested by Buyer during the performance of this Agreement.

## **20. Exclusive Rights**

20.1 All drawings, specifications, prototype articles or other descriptions furnished by Buyer to Seller in connection with this Agreement shall remain the exclusive property of Buyer and shall be returned to Buyer promptly upon its written request.

20.2 Seller agrees that all drawings, field notes, specifications, software and any other documents, materials or work product, whether in written, audio, video or electronic form, developed for Buyer or that are unique to the subject matter of the Agreement (“Work Product”) shall be the property of the Buyer.

20.3 Seller agrees to assign all rights, title and interest, including without limitation copyrights, for all such Work Product to Buyer. Buyer shall have the right to use any drawings, field notes, specifications, software and any other documents, materials or work product that were not developed for the Buyer or are not unique to the subject matter of the Agreement, for any purpose pertaining to the Buyer’s installation, operation, maintenance and repair of the Goods purchase hereunder including the right contract with others for the manufacture of replacement parts or the installation of any additional complementary equipment, software or components.

20.4 Buyer's failure to take possession of any such drawings, field notes, specifications, software or any other documents, material or Work Product at the time the Goods are delivered or the Services are rendered by Seller shall not be construed as a waiver of any of Buyer’s rights under this section.

## **21. Confidentiality**

21.1 Seller shall keep confidential all information, drawings, specifications and data furnished by Buyer, or prepared by Seller specifically in connection with the performance of this Agreement and shall not divulge or use such information, drawings, specifications or data for any purpose other than as necessary in connection with this Agreement or as required by law or judicial order. Except as required for the efficient performance of this Agreement, Seller shall not make copies or permit copies to be made without the prior written consent of Buyer.

21.2 The obligations under this paragraph will survive the cancellation, termination or completion of this Agreement for a period of five (5) years.

## **22. Seller’s Compliance with All Laws**

22.1 Seller represents and warrants to Buyer that during the entire term of this Agreement Seller shall conduct its operations, and perform its obligations under the Agreement, in compliance with all applicable Federal, state, Foreign, provincial and local laws and ordinances and all lawful orders, rules and regulations thereunder, and specifically with, but not limited to, any import and export, and health, safety and environmental laws, treaties ordinances, codes and regulations of any jurisdiction (whether international, country, region, state, province, city, or local) where the Agreement may be performed.

22.2 NOTWITHSTANDING ANY OTHER PROVISION IN THE PURCHASE ORDER TO THE CONTRARY, NOTHING CONTAINED IN THE PURCHASE ORDER WILL OBLIGATE BUYER OR SELLER TO ENGAGE IN ANY ACTION OR OMISSION TO ACT WHICH WOULD BE PROHIBITED BY OR PENALIZED UNDER THE LAWS OR REGULATIONS OF THE UNITED STATES OF AMERICA.



### **23. Right to Audit**

23.1 Seller shall maintain, in accurate and complete order, all books and records (whether in printed, electronic or other format) associated with work performed and charges invoiced to and paid by Buyer pursuant to this Agreement.

23.2 Such books and records shall also include (without limitation) all records relating to any (i) changes or extra work, (ii) claims for allowable adjustment of the purchase order price, (iii) entertainment, gifts and business, financial or other transactions between Seller and any Buyer employees, (iv) allowable termination costs and (v) any other allowable charges covered under the purchase order.

23.3 Such books and records, and all other books and records of Seller pertaining to the Agreement, shall be open to inspection and audit by representatives of Buyer during reasonable business hours during the life of the Agreement, and for a period of two (2) years thereafter.

### **24. Government Contracts**

**This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60- 300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

### **25. Authority: Binding Effect: Assignment**

25.1 Seller and Buyer represent and warrant to each other that each has entered into this Agreement through its duly authorized representative(s), and that this Agreement is a binding agreement enforceable according to its terms.

25.2 The Agreement shall be binding upon, and inure to the benefit of, each party and its successors and permitted assigns. Seller shall not assign any of its rights or interest in this contract or all or substantially all of its performance of this contract without Buyer's prior written consent.

25.3 Seller shall not delegate any of its duties or obligations under this contract.

25.4 Seller may assign its right to monies due or to become due except as set forth in (14), above. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this contract or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment.

25.5 This article does not limit Seller's ability to purchase standard commercial supplies or raw materials.

### **26. Rights and Remedies**

26.1 Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of this Agreement, or in exercising any rights or remedies under this Agreement, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this Agreement, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in quit.

26.2 If any provision of this Agreement is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.

**27. Entire Agreement: Survival of Obligations**

27.1 This Agreement, and any other agreement or document specifically incorporated herein on the face of this purchase order, sets forth the entire agreement between Seller and Buyer with respect to the subject matter thereof.

27.2 There are no promises, representations, warranties or understandings, express or implied, which are not set forth in this Agreement. Any modification or alteration of this Agreement shall be effective only if set forth in a writing duly executed by authorized representatives of each party.

27.3 Each party agrees that its respective warranties, indemnities and other obligations shall survive delivery and payment and shall extend for a period of five years from and after the date on which performance of final delivery and payment occurs.

**28. Governing Law: Venue**

28.1 This Agreement shall be governed exclusively by the Federal laws of the USA to the extent applicable, and by the laws of the Commonwealth of Pennsylvania, excluding Pennsylvania conflict of laws provision.

28.2 The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this Agreement.

28.3 Seller irrevocably agrees that any legal action or proceeding seeking the enforcement of interpretation of the Agreement or these terms and conditions may be brought in the courts of the Commonwealth of Pennsylvania in Allegheny County, Pennsylvania or the Federal District Court for the Western District of Pennsylvania in Pittsburgh, Pennsylvania.

28.4 By its acceptance of the Agreement, Seller hereby irrevocably submits itself to the jurisdiction of any such Courts and waives any objection it may now or hereafter have to the placing of venue in any such courts and right to remove any such action or proceeding to another Court.

**29. Conflict Minerals**

29.1 Seller hereby certifies that 1) no material delivered by Seller to Buyer under this Order contains any substance originating from the Democratic Republic of Congo or any adjoining country that would require disclosure by Buyer under the conflict minerals provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any rule promulgated thereunder or 2) Seller is certified as "Conflict Free" by an authorized governing body.

29.2 Seller represents and warrants that it has adopted all appropriate policies and procedures, and taken all necessary measures, in accordance with the conflict minerals provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all rules promulgated thereunder, to grant the certification in the preceding sentence. Seller shall flow down the substance of this clause to its suppliers which perform work or provide goods or services under this Order. Such flow down is subject to verification by Buyer.

**30. Pallet Safety**

30.1 Kennametal requires any shipment to its locations to be safe and shipped on standardized pallets. Pallets shall be compliant with ISO 6780 or equivalent standard. Pallets must not be overloaded, cracked, deformed or otherwise defective. Goods must be safely secured onto pallets or otherwise contained. Kennametal requires any load unit intended to be manually unpacked to be not more than 15 kg/33 lb.

30.2 Kennametal has the right to reject shipments at Seller's cost if pallets or load are in a condition where safe unloading is not reasonably possible. Any deviation from the requirements of this section must be agreed to in writing by Kennametal.